

# PLANNING PROPOSAL

Blue Mountains  
Local Environmental Plan 2015  
(Draft Amendment 11)



**Housekeeping Amendment – various clauses**

**As prepared for Council endorsement  
August 2018**

**Prepared by Blue Mountains City Council**

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## PART 1 OBJECTIVES OR INTENDED OUTCOMES

The purpose of this planning proposal is to make a housekeeping amendment to LEP 2015. The planning proposal seeks an amendment for one or more of the following reasons:

- Correcting minor errors to clauses to include intent that was present in LEP 1991 or LEP 2005 but was unintentionally removed in the drafting of LEP 2015.
- Removing the time limitations for possible future development listed in Schedule 1.
- Adding items to Schedule 2.

The objectives and intended outcomes for each of the four affected clauses are summarised below.

**1. Amending clause 6.25 Dwelling houses and ancillary development on land in zone E2 Environmental Conservation**

The objective of this amendment is to make twofold minor amendments to reinstate provisions and outcomes that were present in LEP 1991 and LEP 2005. The two amendments to this clause are:

- To clarify that the benefits provided by this clause apply to one parcel of land only; and
- To include additional flexibility for certain ancillary developments.

The objectives will be achieved by minor amendments to the existing clause and adding an additional sub-clause 3. The intended outcome of the proposed amendment to cl.6.25 will clarify how the provision is to be applied and will expand where certain ancillary development may be located on land in zone E2 Environmental Conservation.

**2. Removal of sunset requirement and site restoration (Schedule 1)**

This amendment applies to the listing in Item 4 in Schedule 1 for Use of certain land at 132-158 Grose Road, Faulconbridge by amending sub-clause 3. Sub-clause 3 required that the mining and restoration plan for the site be prepared and substantially completed within 2 years of the commencement of LEP 2015 and Council is proposing to remove the 2 year time restriction only.

**3. Adding fences as Exempt development (Schedule 2)**

This is a new provision Council is proposing to include permitting fences on land in zone E4 Environmental Living as exempt development, when consistent with the prescribed requirements. The intention of the proposed clause is to reduce confusion for the community, reinstate a provision which existing until recently and remove unnecessary regulatory burden on property owners and Council.

**4. Adding rainwater tanks (above ground) as Exempt development (Schedule 2)**

This is a new provision Council is proposing to include permitting rainwater tanks (above ground), on land in zone E4 Environmental Living as exempt development when consistent with the prescribed requirements. The intention of the proposed clause is to remove unnecessary regulatory burden on both property owners and Council.

## PART 2 EXPLANATION OF PROVISIONS

### 1. Amending clause 6.25 Dwelling houses and ancillary development on land in zone E2 Environmental Conservation

Within the Blue Mountains there are a significant number of parcels of land which include land in zone E2 Environmental Conservation. The E2 Environmental Conservation is a very restrictive zone and in some instances, optimum development of the site is achieved by permitting certain development, ancillary to a dwelling house, to have minor encroachments onto land zoned E2.

The objectives of cl.6.25 require any such development into land in zone E2 Environmental Conservation must be consistent with the environmental values of the land. Furthermore, an applicant must satisfy Council that the development has been or will be of a minor encroachment, will be lawfully carried out, is appropriately sited and will provide optimal site layout.

The objective of the amendment to this clause is twofold. The first objective is to clarify that the benefits provided by this clause will apply to one parcel of land only and secondly to include additional flexibility for certain ancillary developments. This will be achieved by clarifying the objectives of the clause and re-wording sub-clauses and adding an additional sub-clause.

The intent of the existing clause is to permit a dwelling house, and certain development ancillary to a dwelling house, on land adjacent to the boundary of zone E2 Environmental Conservation where it is consistent with the zone objectives. Clause 6.25 permits a dwelling house to extend up to 10m onto land in zone E2 Environmental Conservation and references the definition of ancillary development in the Exempt and Complying (Codes) SEPP.

The intent of this provision was transferred from LEP 2005 however certain requirements of this clause have need of further clarification, particularly around the location of the 10m extension. The provisions encapsulated in clause 6.25 transferred from LEP 2005 provide flexibility for the location of dwelling houses and ancillary development on land in an environmental protection zone. Under LEP 2005 the intent and application of the clause was that it applied to one parcel of land only. However a situation arose recently where the issue of 'borrowing' the benefit from land on an adjoining property was raised as a possible interpretation of the clause.

Through this proposed amendment, Council wishes to clarify that land relied upon to extend development from, land in zone E3 Environmental Management or E4 Environmental Living, must be on the same parcel of land as land into which development will extend.

Secondly, Council wishes to permit, with consent certain ancillary developments, to extend beyond the 10m limit into land in zone E2 Environmental Conservation. These ancillary developments include a driveway, an on-site-sewerage-management system or required asset protection zone. The intent of this amendment is transferred from the land use *development ancillary to a dwelling house* which was separately defined in LEP 2005 and was a permissible use in most zones including Environmental Protection – Private, equivalent to zone E2 Environmental Conservation in LEP 2015.

The following changes (~~strike through~~ for removal and underlined for additions) are proposed to the written instrument as part of this draft housekeeping amendment.

#### **6.25 Dwelling houses extending onto land in Zone E2**

- (1) The objective of this clause is to permit development for the purpose of a dwelling houses (including any ancillary development) ~~on land in Zone E2 Environmental Conservation if the development is consistent with the environmental values of the land~~ to extend from land within:

- (a) Zone E3 Environmental Management, or
- (b) Zone E4 Environmental Living, or
- (c) any other zone on which development for the purpose of a dwelling house is permissible (excluding Zone E2 Environmental Conservation),

onto land in the same ownership that is within Zone E2 Environmental Conservation, but only if the development is compatible with the environmental values of the land within Zone E2 Environmental Conservation and the land from which it will extend.

- (2) Despite any other provision of this Plan, development consent must not be granted to development for the purpose of a dwelling house (~~including any or~~ ancillary development) on land in Zone E2 Environmental Conservation unless the consent authority is satisfied that the development:

- ~~(a) the development requires the clearing of vegetation of less than 50 square metres of land, in addition to any clearing required for the erection of a dwelling house or for the establishment of an asset protection zone, and~~
- ~~(b) the development will be located within 10 metres of the boundary of the land in Zone E2 Environmental Conservation and a residential zone, Zone E3 Environmental Management or Zone E4 Environmental Living, and~~
- ~~(c) the development is appropriately sited to provide an optimal site layout and is compatible with the environmental values of the land, and~~
- ~~(d) the development complies with the objectives of Zone E2 Environmental Conservation and the adjoining zone.~~

- (a) is a contiguous part of, or is ancillary development to serve, a dwelling house that is or is proposed to be erected on land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation, and
- (b) is not located more than 10 metres from the land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation, and
- (c) complies with the objectives of Zone E2 Environmental Conservation and the other zone on which the development is to be located, and
- (d) is appropriately sited to provide an optimal layout and location for the proposed development, in terms of the environmental values of all of the land on which the development will be located, and
- (e) requires less than 50 square metres of vegetation to be cleared on the land in Zone E2 Environmental Conservation (excluding the clearing required for the footprint of the dwelling house or any on-site sewerage management system, driveway or required asset protection zone that serves the dwelling house), and
- (f) is not for a secondary dwelling.

- (3) Despite sub-clause (2)(b), development consent may be granted for an on-site sewerage management system, a driveway or required asset protection zone on land within Zone E2 Environmental Conservation if it is for the purpose of serving the dwelling house that is or is proposed to be erected on land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation.

- (4) In this clause, ancillary development has the same meaning as in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and also includes any on-site sewerage management system or asset protection zone that serves the dwelling house.

The following text is clause 6.25 as proposed in the Housekeeping Amendment without any formatting:

#### **6.25 Dwelling houses extending onto land in Zone E2**

- (2) The objective of this clause is to permit development for the purpose of a dwelling houses (including any ancillary development) to extend from land within:

- (d) Zone E3 Environmental Management, or
- (e) Zone E4 Environmental Living, or
- (f) any other zone on which development for the purpose of a dwelling house is permissible (excluding Zone E2 Environmental Conservation),

onto land in the same ownership that is within Zone E2 Environmental Conservation, but only if the development is compatible with the environmental values of the land within Zone E2 Environmental Conservation and the land from which it will extend.

- (2) Despite any other provision of this Plan, development consent must not be granted to development for the purpose of a dwelling house (or ancillary development) on land in Zone E2 Environmental Conservation unless the consent authority is satisfied that the development:
- (a) is a contiguous part of, or is ancillary development to serve, a dwelling house that is or is proposed to be erected on land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation, and
  - (b) is not located more than 10 metres from the land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation, and
  - (c) complies with the objectives of Zone E2 Environmental Conservation and the other zone on which the development is to be located, and
  - (d) is appropriately sited to provide an optimal layout and location for the proposed development, in terms of the environmental values of all of the land on which the development will be located, and
  - (e) requires less than 50 square metres of vegetation to be cleared on the land in Zone E2 Environmental Conservation (excluding the clearing required for the footprint of the dwelling house or any on-site sewerage management system, driveway or required asset protection zone that serves the dwelling house), and
  - (f) is not for a secondary dwelling.
- (3) Despite sub-clause (2)(b), development consent may be granted for an on-site sewerage management system, a driveway or required asset protection zone on land within Zone E2 Environmental Conservation if it is for the purpose of serving the dwelling house that is or is proposed to be erected on land described in sub-clause 6.25(1) that is immediately adjoining and in the same ownership as the land in Zone E2 Environmental Conservation.
- (4) In this clause, ancillary development has the same meaning as in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and also includes any on-site sewerage management system or asset protection zone that serves the dwelling house.

## **2. Removal of sunset requirement and site restoration (Schedule 1)**

### **Item 4 of Schedule 1**

This amendment applies to the listing in Item 4 in Schedule 1 for Use of certain land at 132-158 Grose Road, Faulconbridge. Sub-clause 3(a) required that the mining and restoration plan for the site is to be prepared and substantially completed within 2 years of the commencement of LEP 2015 and this amendment proposes to remove the 2 year time limit.

The land contains a sandstone quarry and is zoned partially E4 Environmental Living and part E2 Environmental Conservation. The land in zone E4 Environmental Living has a 2500m<sup>2</sup> minimum lot size reflecting the parcels environmental features and development potential. The sunset clause was included in LEP 1991 however it lapsed after 1 year. During the exhibition of DLEP 2013 (now LEP 2015) the owner requested the sunset clause be reintroduced for a 2 year period and this has now expired.

The amendment does not include removing or changing the requirement that a mining and restoration plan prepared by a suitably qualified person, approved by Council and substantially completed is required prior to development of the site for the purpose of subdivision.

The quarry mining activity can continue at the site via section 4.66 of the Environmental Planning and Assessment Act 1979 and clause 4(2) of Schedule 1 of LEP 2015 (*Development for the purpose of extractive industries is permitted with development consent*).

The following changes (~~strike through~~ for removal and underlined for additions) are proposed to the written instrument as part of this draft housekeeping amendment.

**4 Use of certain land at 132–158 Grose Road, Faulconbridge**

- (1) This clause applies to land at 132–158 Grose Road, Faulconbridge, being Lot 41, DP 614720.
- (2) Development for the purpose of extractive industries is permitted with development consent.
- (3) Development for the purpose of subdivision is permitted with development consent if ~~the consent authority is satisfied that:~~
  - (a) ~~within 2 years after the commencement of this Plan,~~ development consent has been granted for a mining and restoration plan prepared by a suitably qualified person which adequately specifies how the land is to be restored for the purpose of the subdivision, and
  - (b) the work specified in the mining and restoration plan for which development consent has been granted, has been substantially completed to the satisfaction of Council.

The following text is clause 4 of Schedule 1 as proposed in the Housekeeping Amendment without any formatting

**4 Use of certain land at 132–158 Grose Road, Faulconbridge**

- (1) This clause applies to land at 132–158 Grose Road, Faulconbridge, being Lot 41, DP 614720.
- (2) Development for the purpose of extractive industries is permitted with development consent.
- (3) Development for the purpose of subdivision is permitted with development consent if:
  - (a) development consent has been granted for a mining and restoration plan prepared by a suitably qualified person which adequately specifies how the land is to be restored for the purpose of the subdivision, and
  - (b) the work specified in the mining and restoration plan for which development consent has been granted, has been substantially completed to the satisfaction of Council.

**3. Adding fences as Exempt development (Schedule 2)**

**Clause 1 of Schedule 2**

This is a new provision Council is proposing to include, permitting dividing fences, when consistent with the prescribed requirements, as exempt development. Under the provisions of the Codes SEPP as amended on 22 February 2014, the demolition, erection or replacement of most typical side and rear dividing fences up to 1.8m high on residential zone is exempt development. However the erection of a traditional timber paling, or pre-painted metal fence along the side or rear boundaries on lots in zone E4 Environmental Living are no longer exempt.

The only style or type of fence that is able to be erected as exempt development on land in zone E4 Environmental Living under LEP 2015 is limited to fences of post and wire, or post and rail construction. This represents a significant departure from past practice and does not reflect community expectations or understanding.

Council proposes to insert a clause into Schedule 2 of LEP 2015, exempting dividing fences from the need to obtain development consent with the aim this will reduce confusion for the community and remove unnecessary regulatory burden on both property owners and Council.

In the preparation of this Planning Proposal, the Department of Planning placed a Housekeeping amendment to the Codes SEPP on public exhibition. The amendment includes provisions which match the amendment proposed here. Council supports the proposed amendments to the Codes SEPP with respect to fences on land in zone E4 being exempt development. Should the proposed amendment to the SEPP (Exempt and Complying Codes) 2008 be made as proposed, this amendment to LEP 2015 will be redundant.

The following clause is proposed to be included in Schedule 2 *Exempt development* as part of this housekeeping amendment.

**(1) Fences on land in zone E4 Environmental Living**

1. Must be on land within zone E4 Environmental Living.
2. Must not be on a lot, or along a common boundary of a lot, that contains a heritage item or a draft heritage item.
3. Must not be along the boundary of, or within the setback of, a primary or secondary road within a heritage conservation area or draft heritage conservation area.
4. Must not be on a flood control lot.
5. Must not be higher than 1.8m above ground level (existing)
6. Must not be of masonry construction to a height that is more than 1.2m above ground level (existing)
7. Despite sub-clauses (5) and (6), if the fence is erected on a sloping site and stepped to accommodate the fall in the land:
  - a. a fence that is required to be not more than 1.2m above ground level (existing), must not be more than 1.5m above ground level (existing) at each step, and
  - b. a fence that is required to be not more than 1.8m above ground level (existing), must not be more than 2.2m above ground level (existing) at each step.
8. Must not have a gate that opens outwards if it includes an entrance gate
9. Must be constructed or installed in accordance with the State Environmental Planning Policy No 44—Koala Habitat Protection if located in a core koala habitat or potential koala habitat within the meaning of that Policy, or in a movement corridor used by koalas
10. Must be constructed of non-combustible materials or hardwood if it is located on bush fire prone land
11. Must be of low reflective, factory pre-coloured materials if it is constructed of metal components
12. Must not be an electrical fence or use barbed wire
13. If located along the boundary of, or within the setback area to, a primary or secondary road:
  - a. Must not be more than 1.2m above ground level (existing), and
  - b. Must be open for at least 20% of the area of the fence that is more than 400mm above ground level (existing), with any individual solid element of the fence above this height being no more than 350mm in width with a minimum aperture of 25mm.
14. If a lot has a frontage to a secondary road or roads, sub-clause (13) only applies to 50% of the length of all contiguous secondary road boundaries, measured from the corner with the primary road boundary.
15. Sub-clause (13)(b) does not apply to the part of the fence along the side boundary and within the setback area to the primary road.

**4. Adding rainwater tanks (above ground) as Exempt development (Schedule 2)**

**Clause 2 of Schedule 2**

This is a new provision Council is proposing to include permitting rainwater tanks (above ground), on land in zone E4 Environmental Living as exempt development when consistent with the prescribed requirements. The prescribed requirements are based on those included in the Exempt and Complying (Codes) SEPP for zones other than rural or environmental zones.

In the Blue Mountains, the E4 zone is applied to land that is suitable for residential development, which has a predominant bushland character, but may be subject to environmental constraints or limitations in servicing. The allotments are typically 1200m<sup>2</sup> and there is a community expectation that such land is used in a manner similar to residential land albeit with larger lots. It is considered that permitting rainwater tanks with restrictions as exempt development similar to that in residential zones, aligns with both Council and the community's expectation.

In the preparation of this Planning Proposal, the Department of Planning placed a Housekeeping amendment to the Codes SEPP on public exhibition. The amendment includes provisions which match the amendment proposed here. Council supports the proposed amendments to the Codes SEPP with respect to rainwater tanks on land in zone E4 being exempt development. Should the proposed amendment to the SEPP (Exempt and Complying Codes) 2008 be made as proposed, this amendment to LEP 2015 will be redundant.

The following clause is proposed to be included in Schedule 2 *Exempt development* as part of this housekeeping amendment.

**(2) Rainwater tanks (above ground) on land in zone E4 Environmental Living**

1. Must be on land in zone E4 Environmental Living
2. Must not be more than 2 tanks per lot and the maximum capacity for all tanks under this provision is 10,000L.
3. Must be located at least 450mm from each lot boundary, if the tank has a height of more than 1.8m above ground level (existing), and
4. Be located behind the building line of any road frontage, and
5. Not rest on the footings of an existing building for support, and
6. Not require cut and fill of more than 1m below or above ground level (existing), and
7. Be fitted with a screened rain head designed to ensure self-cleaning and prevent leaf litter entering into the water tank, and
8. Be fitted with a first-flush device incorporating an automatic resetting valve that causes initial run-off rainwater to bypass the tank, and
9. Be constructed or installed with inlets and outlets designed to prevent mosquitoes breeding in it, and
10. Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners, and
11. Have a sign affixed to it with a statement to the effect that the water in the tank is rainwater, and
12. If it is constructed or installed on or in a heritage item or a draft heritage item—be located in the rear yard.
13. Pumps attached to the development must be housed in an enclosure that is soundproofed.
14. If reticulated water is provided to the lot, the development must not be interconnected with any system supplying drinking water to the lot unless it complies with the relevant water authority's requirements.

## PART 3 JUSTIFICATION

### Section A - A Need for the Planning Proposal

This planning proposal is for a housekeeping amendment to LEP 2015. It is seeking only to correct errors and reword particular clauses to improve their clarity and ensure that they operate as intended. It is not intended to change planning policy.

**1. Is the planning proposal a result of any strategic study or report?**

No, this planning proposal does not necessitate a strategic study or report because it is not seeking to change planning policy. It is simply to improve the operation and clarity of existing clauses, and correct minor errors.

**2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes, an amendment to the LEP to clarify the operation of the subject clauses and to correct minor errors is the best means of ensuring the LEP operates as intended and provides for consistent interpretation of provisions.

### Section B - Relationship to strategic planning framework

**3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub – regional strategy (including the Greater Sydney Regional Plan and exhibited draft strategies)?**

This planning proposal seeks only to make a housekeeping amendment to LEP and is not inconsistent with the Greater Sydney Region Plan (2018) and the Western City District Plan (2018). The amendment is to correct minor errors and improve the wording of existing clauses.

**4. Is the planning proposal consistent with the local council's strategy, or other local strategic plan?**

This planning proposal only seeks to make a housekeeping amendment to LEP and is not inconsistent with the Sustainable Blue Mountains 2025 and other adopted local strategic planning policies. The amendment is only to correct errors and improve the wording of existing clauses.

**5. Is the planning proposal consistent with applicable state environmental planning policies?**

The following table documents the analysis undertaken of the application and consistency of LEP 2015 Draft Amendment 11 with all State Environmental Planning Policies (SEPPs) and relevant Sydney Regional Environmental Plans (SREPs).

Note:

<sup>1</sup> **Not Relevant:** This SEPP or SREP does not apply to land within LEP 2015 Draft Amendment 11

<sup>2</sup> **Consistent:** This SEPP or SREP applies; LEP 2015 Draft Amendment 11 meets the relevant requirements and is in accordance with the SEPP or SREP.

<sup>3</sup> **Justifiably Inconsistent:** This SEPP or SREP applies; LEP 2015 Draft Amendment 11 does not meet all the requirements or may be inconsistent with this SEPP or SREP as outlined following the table

<b>State Environmental Planning Policies in force</b>		<b>NOT RELEVANT<sup>1</sup></b>	<b>CONSISTENT<sup>2</sup></b>	<b>JUSTIFIABLY INCONSISTENT<sup>3</sup></b>
<b>SEPP 1</b>	Development Standards	✓		
<b>SEPP 19</b>	Bushland in Urban Areas	✓		
<b>SEPP 21</b>	Caravan Parks	✓		
<b>SEPP 30</b>	Intensive Agriculture	✓		
<b>SEPP 33</b>	Hazardous and Offensive Development	✓		
<b>SEPP 36</b>	Manufactured Home Estates	✓		
<b>SEPP 44</b>	Koala Habitat Protection		✓	
<b>SEPP 47</b>	Moore Park Showground	✓		
<b>SEPP 50</b>	Canal Estate Development	✓		
<b>SEPP 52</b>	Farm Dams and Other Works in Land and Water Management Plan Areas	✓		
<b>SEPP 55</b>	Remediation of Land		✓	
<b>SEPP 62</b>	Sustainable Aquaculture	✓		
<b>SEPP 64</b>	Advertising and Signage	✓		
<b>SEPP 65</b>	Design quality of Residential Flat Development	✓		
<b>DSEPP 66</b>	Integration of Land Use and Transport	✓		
<b>SEPP 70</b>	Affordable Housing (Revised Schemes)	✓		
<b>SEPP</b>	(Affordable Rental Housing) 2009	✓		
<b>SEPP</b>	(Building Sustainability Index: BASIX) 2004	✓		
<b>SEPP</b>	(Coastal Management) 2018			
<b>SEPP</b>	(Educational Establishments and Child Care Facilities) 2017	✓		
<b>SEPP</b>	(Exempt and Complying Development Codes) 2008			✓
<b>SEPP</b>	(Housing for Seniors or People with a Disability) 2004	✓		
<b>SEPP</b>	(Infrastructure) 2007	✓		
<b>SEPP</b>	(Integration and Repeals) 2016	✓		
<b>SEPP</b>	(Kosciuszko National Park – Alpine Resorts) 2007	✓		
<b>SEPP</b>	(Kurnell Peninsula) 1989	✓		
<b>SEPP</b>	(Mining, Petroleum Production and Extractive Industries) 2007		✓	
<b>SEPP</b>	(Miscellaneous Consent Provisions) 2007	✓		
<b>SEPP</b>	(Penrith Lakes Scheme) 1989	✓		
<b>SEPP</b>	(Rural Lands) 2008	✓		
<b>SEPP</b>	(State and Regional Development) 2011	✓		
<b>SEPP</b>	(State Significant Precincts) 2005	✓		
<b>SEPP</b>	(Sydney Drinking Water Catchment) 2011		✓	
<b>SEPP</b>	(Sydney Region Growth Centres) 2006	✓		
<b>SEPP</b>	(Three Ports) 2013	✓		
<b>SEPP</b>	(Urban Renewal) 2011	✓		
<b>SEPP</b>	(Vegetation in Non-Rural Areas) 2017	✓		
<b>SEPP</b>	(Western Sydney Employment Area) 2009	✓		
<b>SEPP</b>	(Western Sydney Parklands) 2009	✓		
<b>SREP</b>	Sydney Regional Environmental Plan No. 20 Hawkesbury – Nepean River (No. 2 – 1997)		✓	

This planning proposal is justifiably inconsistent with the SEPP (Exempt and Complying Development Codes) 2008 as detailed below and request that the Director, Codes and Approval Pathways agree to a variation as proposed.

#### **SEPP (Exempt and Complying Development Codes) 2008**

- Clause 1.12 of the SEPP (Exempt and Complying Codes) SEPP 2008 (Codes SEPP) provides for local variations to the codes. Council is proposing variations to the developments noted below which are included in the Codes SEPP.

As outlined in Part 2 of this Planning Proposal the Department of Planning has recently placed a Housekeeping amendment to the Codes SEPP on public exhibition. The amendment includes provisions which match the amendment proposed here. Council supports the proposed amendments to the Codes SEPP with respect to fences and rainwater tanks on land in zone E4 being exempt development. Should the proposed amendment to the SEPP (Exempt and Complying Codes) 2008 be made as currently intended, this amendment to LEP 2015 will be redundant.

- Fences on land in zone E4 Environmental Living

Council is seeking to extend the exempt provision to permit a residential style fence as exempt development on land in zone E4 Environmental Living by including a local variation under the Codes SEPP.

Under the Codes SEPP, fences on land in zone E4 Environmental Living are exempt development when there is compliance with Subdivision 18 Fences (certain rural zones, environmental protection zones and Zone R5). Subdivision 18 prescribes that fences are exempt if constructed using post and wire or post and rail. In the Blue Mountains, the E4 zone is applied to land that is suitable for residential development, which has a predominant bushland character, but may be subject to environmental constraints or limitations in servicing. The allotments are typically 1200m<sup>2</sup> and there is a community expectation that such land is used in a manner similar to residential land albeit with larger lots.

The Codes SEPP was amended in February 2014 allowing the demolition, erection or replacement of most typical side and rear dividing fences on residential zones however timber paling, pre-painted metal divided fences are not exempt development on land in zone E4 Environment Living. The proposed amendment is seeking to remove an onerous and unnecessary burden on affected property owners and reinstate a provision that reflects the community expectations or understanding.

The proposed amendment to Schedule 2 of Blue Mountains LEP 2015 prescribes requirements based on the requirements noted in Subdivision 17 Fences (certain residential zones and Zone RU5) in the Codes SEPP.

Council requests that the Director, Codes and Approval Pathways agree to the variation to the Codes SEPP for fences on land in zone E4 Environmental Living in the Blue Mountains Local Environmental Plan 2015 and that Schedule 2 Exempt development codes – variations in the Codes SEPP be amended.

- Rainwater tanks (above ground) on land in zone E4 Environmental Living

Council is seeking to reduce the setback from a boundary for rainwater tanks on land in zone E4 Environmental Living, the same setback requirement in residential zones. This additional provision is requested as land in zone E4 Environmental Living is used for residential development and typically has lot sizes of 1200m<sup>2</sup>.

Under the Codes SEPP, rainwater tanks (above ground) are exempt development where there is compliance with Subdivision 32 Rainwater tanks (above ground). Sub-clause 2.64(1)(b) sets a minimum setback from each lot boundary of 10m for land in zone E4.

As noted above, land in zone E4 Environmental Living is suitable for residential development and which typically has lots of 1200m<sup>2</sup>, often 20m wide. For many of the lots in zone E4 Environmental Living in the Blue Mountains this results in no option for installing an above ground rainwater tank as exempt development.

The proposed amendment to Schedule 2 of Blue Mountains LEP 2015 prescribes requirements based on the requirements noted in Subdivision 32 Rainwater Tanks (above ground) applicable to land in zone E4 Environmental Living except that the setback from each boundary is reduced to 450mm.

Council requests that the Director, Codes and Approval Pathways agree to the variation to the Codes SEPP for rainwater tanks (above ground) on land in zone E4

Environmental Living in the Blue Mountains Local Environmental Plan 2015 and that Schedule 2 Exempt development codes – variations in the Codes SEPP be amended.

This planning proposal is consistent with all the relevant SEPPs as detailed below.

#### **SEPP 44 Koala Habitat Protection**

- This planning proposal is consistent with the Koala Habitat SEPP as nothing in this planning proposal seeks to contradict or diminish the operation of this SEPP. Koala habitat trees are identified as included in several vegetation communities found in the Blue Mountains, these habitat tree species are *Eucalyptus tereticornis*, *Eucalyptus punctata* and *Eucalyptus viminalis*.
- A detailed review of the proposed changes for each of the clauses follows.

##### Clause 6.25

The objective of this clause is that Council can consider certain limited developments to occur on land zoned E2 Environmental Conservation only where the proposed development is consistent with the environmental values of the land. Sub-clause 5 is seeking to permit an on-site-sewerage-management-system, a driveway or required asset protection beyond the nominated 10 metres of the zone boundary.

This clause is clarifying a requirement that certain developments permissible within land in zone E2 Environmental Conservation, must be on one allotment and within the prescribed distance from the zone boundary.

This clause applies to land in zone E2 Environmental Conservation only and development is highly restricted and requires development consent at which time compliance with this SEPP will be required.

##### Clause 4 Schedule 1

This clause is transferred from LEP 1991 and is seeking to remove the time for restoration and subsequent subdivision. Any future development on the land will need to comply with legislative requirements required at the time of lodgement, including any applicable requirements of this SEPP.

There is an area on this site which contains the vegetation community Open – Forest/Woodland *Eucalyptus piperita* – *Angophora costa*. The area identified with this vegetation community is in zone E2 Environmental Conservation and development potential is limited.

##### Clause 1 Schedule 2

Proposed Sub-clause (9) requires that any fence replaced or installed under this provision must be constructed or installed in accordance with SEPP 44 if located within koala habitat or potential koala habitat or in a movement corridor used by koalas.

##### Clause 2 Schedule 2

This clause is seeking to permit rainwater tanks as exempt development in certain conditions on land in zone E4 Environmental Living. Rainwater tanks will be located on a site where there is existing development as they need to be close to a roof for collection and therefore will not impact upon any scheduled vegetation community.

#### **SEPP 55 (Remediation of Land)**

- This planning proposal is consistent with the Remediation of Land SEPP. This planning proposal is not seeking to change any zones, change any zone objectives or change any permissible land uses, (except APZ or OSSMS as noted in clause 6.25).

A detailed review of the proposed changes for each of the clauses follows.

##### Clause 6.25

This is a clause which could apply to a large number of allotments however the application is very limited. The amendment to this clause seeks to clarify that the land zoned E2 Environmental Conservation and the zone of the land allowing the

development must be in one ownership and that additional encroachments for an on-site-sewerage-management-system, driveway or required asset protection zone will be subject to assessment including requirements of this SEPP.

#### Clause 4 Schedule 1

The property at 132-158 Grose Road Faulconbridge contains a quarry (extractive industry) which is an activity noted in Table 1 of the document Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land. The land is not listed on Council's potentially contaminated land register. This amendment is only seeking to remove the timeframe within which a mining and restoration plan is to be removed.

This planning proposal is not seeking to change any zones, permissible land uses or other provisions relevant to the current or possible future land uses on the land. Any future development proposal on this land will be subject to assessment under the act and relevant SEPP's.

#### Clause 1 Schedule 2

This clause seeks to correct an unintended situation that has arisen with the amendment to the Codes SEPP on 22 February 2014. The introduction of this provision will result in a reinstatement of the long held Council position of not requiring development consent to demolish/remove, erect or replace side or rear dividing fences when complying with the prescribed provisions. The proposed change should not trigger any consideration of this SEPP when the clause is applied.

#### Clause 2 Schedule 2

This clause is seeking to permit rainwater tanks on land in zone E4 – Environmental Living. The proposed change should not trigger any consideration of this SEPP when the clause is applied.

### **SEPP (Sydney Drinking Water Catchment) 2011**

- This planning proposal is consistent with the Drinking Water Catchment SEPP. It proposes to make a housekeeping amendment to LEP 2015 including reinstating provisions lost in the transfer to LEP 2015 or clarifying ambiguities in clauses. A key element of LEP 2015 is the recognition and protection National Park and environment which surround the urban areas of the City, including the Sydney drinking water catchment. Nothing in this planning proposal seeks to diminish or contradict these provisions.
- A detailed review of the proposed changes for each of the clauses follows.

#### Clause 6.25

The proposed changes to clause 6.25 will have negligible impact on Sydney's drinking water. The amendment to this clause seeks to clarify that the land zoned E2 Environmental Conservation and the zone of the land allowing the development must be in one ownership.

Additional encroachments for an on-site-sewerage-management-system, driveway or required asset protection zone will be subject to assessment including requirements of this SEPP.

#### Clause 4 of Schedule 1

This land is not within the Sydney Drinking Water Catchment.

#### Clause 1 Schedule 2

This clause seeks to correct an unintended situation that has arisen with the amendment to the Codes SEPP on 22 February 2014. The introduction of this provision will result in a reinstatement of the long held Council position of not requiring development consent to demolish/remove, erect or replace side or rear dividing fences when complying with the prescribed provisions. The proposed change should not trigger any consideration of this SEPP when the clause is applied.

#### Clause 2 Schedule 2

This clause is seeking to permit rainwater tanks on land in zone E4 – Environmental Living. There is unlikely to be any impact on the Sydney Drinking Water Catchment as there is a maximum capacity of 10,000litres and maximum 1m cut and fill and overflow may be connected to the existing stormwater system.

#### **SEPP (Mining, Petroleum Production and Extractive Industries) 2007**

- This planning proposal is consistent with the Mining, Petroleum and Extractive Industries SEPP. The proposed amendment to Clause 4 Schedule 1 is seeking to remove the time constraint for restoration of the land after the conclusion of the mining activities and prior to any possible future development. The quarry is operating using cl. 4.66 *Continuance of and limitations on existing use* of the EP&A Act and this activity may continue.

The provision was transferred from Schedule 1 of LEP 1991 to LEP 2015 at the request of the owners of the quarry. The proposed amendment to this provision results in additional time to operate the quarry and when the resource is exhausted, rehabilitate the land for a use suitable with the site characteristics and surrounding uses.

#### **SREPP No.20 Hawkesbury-Nepean River (No.2 – 1997)**

- This planning proposal is consistent with the SREP 20. It only proposes to make housekeeping amendments to LEP 2015. A key element of LEP 2015 is the recognition and protection of the National Park and environment which surround the urban areas of the City, including strong stormwater controls. Nothing in this planning proposal seeks to diminish or contradict these provisions.

**6. Is the planning proposal consistent with applicable Directions by the Minister (previous s.117) Directions**

The following table provides a summary of the application and consistency with Directions by the Minister.

**Note:**

<sup>1</sup> **Not Relevant:** This direction does not apply to land within LEP 2015 Draft Amendment 11

<sup>2</sup> **Consistent:** This direction applies; LEP 2015 Draft Amendment 11 meets the relevant requirements and is in accordance with the direction.

<sup>3</sup> **Justifiably Inconsistent:** This direction applies, but LEP 2015 Draft Amendment 11 does not meet all the requirements or may be inconsistent with this direction as outlined following the table.

<b>Directions by the Minister (previous s 117(2))</b>		<b>NOT RELEVANT 1</b>	<b>CONSISTENT 2</b>	<b>JUSTIFIABLY INCONSISTENT 3</b>
<b>1. EMPLOYMENT AND RESOURCES</b>				
1.1	Business and Industrial Zones	✓		
1.2	Rural Zones	✓		
1.3	Mining, Petroleum Production and Extractive Industries		✓	
1.4	Oyster Aquaculture	✓		
1.5	Rural Lands	✓		
<b>2. ENVIRONMENT AND HERITAGE</b>				
2.1	Environmental Protection Zones		✓	
2.2	Coastal Management	✓		
2.3	Heritage Conservation		✓	
2.4	Recreation Vehicle Areas	✓		
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	✓		
<b>3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT</b>				
3.1	Residential Zones	✓		
3.2	Caravan Parks and Manufactured Home Estates	✓		
3.3	Home Occupations	✓		
3.4	Integrating Land Use and Transport	✓		
3.5	Development Near Licensed Aerodromes	✓		
<b>4. HAZARD AND RISK</b>				
4.1	Acid Sulfate Soils	✓		
4.2	Mine Subsidence and Unstable Land		✓	
4.3	Flood Prone Land		✓	
4.4	Planning for Bushfire Protection		✓	
<b>5. REGIONAL PLANNING</b>				
5.2	Sydney Drinking Water Catchments		✓	
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	✓		
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	✓		
5.8	Second Sydney Airport: Badgerys Creek	✓		
5.9	North West Rail Link Corridor Strategy	✓		
5.10	Implementation of Regional Plans	✓		
<b>6. LOCAL PLAN MAKING</b>				
6.1	Approval and Referral Requirements	✓		
6.2	Reserving Land for Public Purposes	✓		
6.3	Site Specific Provisions		✓	
<b>7. METROPOLITAN PLANNING</b>				
7.1	Implementation of A Plan for Growing Sydney		✓	
7.2	Implementation of Greater Macarthur Land Release Investigation	✓		
7.3	Parramatta Road Corridor Urban Transformation Strategy	✓		
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		

<b>Directions by the Minister (previous s 117(2))</b>		<b>NOT RELEVANT 1</b>	<b>CONSISTENT 2</b>	<b>JUSTIFIABLY INCONSISTENT 3</b>
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	✓		
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Plan	✓		
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	✓		

This planning proposal is consistent with all relevant the Directions by the Minister as detailed below.

### **Direction 1.3 Mining, Petroleum Production and Extractive Industries**

#### **Objective**

- (1) *The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.*

#### **Where this direction applies**

- (2) *This direction applies to all relevant planning authorities.*

#### **When this direction applies**

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of:*
- (a) *prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or*
  - (b) *restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.*

#### **What a relevant planning authority must do if this direction applies**

- (4) *In the preparation of a planning proposal affected by this direction, the relevant planning authority must:*
- (a) *consult the Director-General of the Department of Primary Industries (DPI) to identify any:*
    - (i) *resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and*
    - (ii) *existing mines, petroleum production operations or extractive industries occurring in the area subject to the planning proposal, and*
  - (b) *seek advice from the Director-General of DPI on the development potential of resources identified under (4)(a)(i), and*
  - (c) *identify and take into consideration issues likely to lead to land use conflict between other land uses and :*
    - (i) *development of resources identified under (4)(a)(i), or*
    - (ii) *existing development identified under (4)(a)(ii).*
- (5) *Where a planning proposal prohibits or restricts development of resources identified under (4)(a)(i), or proposes land uses that may create land use conflicts identified under (4)(c), the relevant planning authority must:*
- (a) *provide the Director-General of DPI with a copy of the planning proposal and notification of the relevant provisions,*
  - (b) *allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the planning proposal, and*
  - (c) *include a copy of any objection and supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) before undertaking community consultation in satisfaction of section 57 of the Act.*

#### **Consistency**

- (6) A *planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the provisions of the planning proposal that are inconsistent are of minor significance.*

### **Response**

This draft amendment applies to land used for an extractive industry. However this Direction is not relevant to this Planning Proposal as there is no proposal to prohibit or restrict existing mining operations at the site. The quarry is operating using cl. 4.66 *Continuance of and limitations on existing use* of the EP&A Act and this activity may continue.

The proposed amendment to Clause 4 Schedule 1 is seeking to remove the time constraint for restoration of the land after the conclusion of the mining activities and prior to any possible future development. The provision was transferred from Schedule 1 of LEP 1991 to LEP 2015

at the request of the owners of the quarry. The proposed amendment to this provision results in additional time to operate the quarry and when the resource is exhausted, rehabilitate the land for a use suitable with the site characteristics and surrounding uses.

Any development resulting from the proposed amendment to clause 6.25 that is on land within a Mine Transition Area will require assessment.

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## **Direction 2.1 Environmental Protection Zones**

### **Objective**

- (1) The objective of this direction is to protect and conserve environmentally sensitive areas.

### **Where this direction applies**

- (2) This direction applies to all relevant planning authorities.

### **When this direction applies**

- (3) This direction applies when a relevant planning authority prepares a planning proposal.

### **What a relevant planning authority must do if this direction applies**

- (4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.
- (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".

### **Consistency**

- (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
- (a) justified by a strategy which:
    - (i) gives consideration to the objectives of this direction,
    - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
    - (iii) is approved by the Director-General of the Department of Planning, or
  - (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
  - (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
  - (d) is of minor significance.

## **Response**

This draft amendment is consistent with Ministerial Direction 2.1 Environmental Protection as it is of minor significance. Proposed changes include land in an Environmental Protection zone. A review to the proposed changes to the clauses follows:

### **Clause 6.25**

The proposed change to clause 6.25 will not result in the rezoning of any land or alteration to zone objectives. A proposed alteration to this clause will permit minor encroachments into land in zone E2 Environmental Conservation for limited development and where prescribed criteria, including zone objectives are met.

Under Clause 6.25 a property owner may extend a dwelling house, or certain ancillary development, into land in zone E2 Environmental Conservation. The proposed amendment clarifies this may only occur where the development, and the boundary of the zone permitting the development are on the same lot, thus preventing "borrowing" opportunity from an adjoining land.

Additionally, an amendment is proposed to sub-clause 5 is seeking to permit developments for the purpose of an *on-site-sewerage-treatment-system*, a *driveway* or *required asset protection zone*. Currently these developments are limited to the same distances as any other development under this clause. Sub-clause 1 requires that the development must be consistent with the environmental values of the land and sub-clause (2) requires that Council must be satisfied that the development is appropriately sited to provide an optimal site layout.

Blue Mountains City Council highly values protection of the environment through the use of comprehensive and stringent controls and a rigorous assessment process.

#### Clause 4 of Schedule 1

The land at 132-158 Grose Road Faulconbridge has zones E4 Environmental Living and E2 Environmental Conservation. The land is zoned part E2 Environmental Conservation and part E4 Environmental Living. An existing sandstone quarry operates on that part of the site zoned E4 Environmental Living.

This proposal is seeking to remove the time restriction for the completion of mining and restoration plan. There will be no change to the zones or development potential as a consequence of this proposal.

#### Proposed Clause 1 of Schedule 2

The proposed clause will apply to land in zone E4 Environmental Living. This amendment will allow demolition, erection and replacement of fencing as “exempt development” when consistent with the prescribed provisions. The draft proposal does not change any zones or permissible land uses.

#### Proposed Clause 2 of Schedule 2

The proposed clause will apply to land in zone E4 Environmental Living. This amendment will allow demolition, erection and replacement of fencing as “exempt development” when consistent with the prescribed provisions. The draft proposal does not change any zones or permissible land uses.

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### **Direction 2.3 Heritage Conservation**

#### **Objective**

- (1) *The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

#### **Where this direction applies**

- (2) *This direction applies to all relevant planning authorities.*

#### **When this direction applies**

- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*

#### **What a relevant planning authority must do if this direction applies**

- (4) *A planning proposal must contain provisions that facilitate the conservation of:*
- (a) *items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
  - (b) *Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

#### **Consistency**

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
- (a) *the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
  - (b) *the provisions of the planning proposal that are inconsistent are of minor significance.*

#### Response

The proposed amendment is consistent with Ministerial Direction 2.3 Heritage Conservation as it does not alter the conservation of any heritage items, places, buildings, works, relics, moveable objects or precincts of environmental heritage. However some heritage items fall on land included in proposed changes and a detailed review of each clause follows.

#### Clause 6.25

This clause applies to land in zone E2 Environmental Conservation across the local government area and some sites could include items of heritage significance. Any development proposed using this provision will require assessment and development consent.

#### Clause 4 of Schedule 1

There are no identified items of heritage significance and any development on the site will require assessment and development consent.

#### Clause 1 Schedule 2

Sub-clause (2) and (3) restrict the construction of fences as exempt development on land containing a heritage item or heritage conservation area or draft heritage items or draft heritage items unless they comply with the prescribed conditions.

#### Clause 2 Schedule 2

Sub-clause (12) restricts the installation of a rainwater tank as exempt development on land containing a heritage item or draft heritage item to the rear yard of the property.

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### **Direction 4.2 Mine Subsidence and Unstable Land**

#### **Objective**

- (9) *The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.*

#### **Where this direction applies**

- (10) *This direction applies to land that:*
- (a) *is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or*
  - (b) *has been identified as unstable land.*

#### **When this direction applies**

- (11) *This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that:*
- (a) *is within a mine subsidence district, or*
  - (b) *has been identified as unstable in a study, strategy or other assessment undertaken:*
    - (i) *by or on behalf of the relevant planning authority, or*
    - (ii) *by or on behalf of a public authority and provided to the relevant planning authority.*

#### **What a relevant planning authority must do if this direction applies**

- (12) *When preparing a planning proposal that would permit development on land that is within a Mine Subsidence District a relevant planning authority must:*
- (a) *consult the Mine Subsidence Board to ascertain:*
    - (i) *if the Mine Subsidence Board has any objection to the draft Local Environmental Plan, and the reason for such an objection, and*
    - (ii) *the scale, density and type of development that is appropriate for the potential level of subsidence, and*
  - (b) *incorporate provisions into the draft Local Environmental Plan that are consistent with the recommended scale, density and type of development recommended under (4)(a)(ii), and*
  - (c) *include a copy of any information received from the Mine Subsidence Board with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.*

- (13) *A planning proposal must not permit development on unstable land referred to in paragraph 3(b).*

#### **Consistency**

- (14) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
- (a) *justified by a strategy which:*
    - (i) *gives consideration to the objective of this direction, and*
    - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
    - (iii) *is approved by the Director-General of the Department of Planning, or*
  - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
  - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
  - (d) *of minor significance.*

#### Response

This Ministerial Direction does not apply to any land subject to this Planning Proposal. Blue Mountains LGA does not contain any land within a Mine Subsidence District.

#### Clause 6.25

This clause applies to land in zone E4 Environmental Living, E3 Environmental Management, IN1 General Industrial or IN2 Light Industrial and these zones are not present within the areas identified as Protected Area – landslip area.

#### Schedule 1

The proposed changes applies to one lot only and this is not within a Protected Area – landslip area.

## Clauses 1 and 2 Schedule 2

The proposed changes apply to land in zone E4 Environmental Living only and this zone is not present within the areas identified as Protected Area – landslip area.

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### **Direction 4.3 Flood Prone Land**

#### **Objectives**

- (1) *The objectives of this direction are:*
- (a) *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
  - (b) *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

#### **Where this direction applies**

- (2) *This direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA.*

#### **When this direction applies**

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.*

#### **What a relevant planning authority must do if this direction applies**

- (4) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*
- (5) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*
- (6) *A planning proposal must not contain provisions that apply to the flood planning areas which:*
  - (a) *permit development in floodway areas,*
  - (b) *permit development that will result in significant flood impacts to other properties,*
  - (c) *permit a significant increase in the development of that land,*
  - (d) *are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
  - (e) *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.*
- (7) *A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*
- (8) *For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*

#### **Consistency**

- (9) *A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:*
- (a) *the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or*
  - (b) *the provisions of the planning proposal that are inconsistent are of minor significance.*

## Response

This draft amendment is consistent with Ministerial Direction 4.3 Flood Prone Land as any changes to development on land as a result of this proposal will be of minor significance.

## Clause 6.25

Any development occurring as a consequence of the proposed changes to Clause 6.25 will require development consent including considering matters such as possible flooding.

## Clause 1 Schedule 2

Sub-clause (4) prohibits fences as exempt development if the land is a flood control lot.

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### **Direction 4.4 Planning for Bushfire Protection**

#### **Objectives**

- (1) *The objectives of this 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.*

#### **Where this direction applies**

- (2) This direction applies to all local government areas in which the responsible Council is required to prepare a bush fire prone land map under section 146 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.

#### **What a relevant planning authority must do if this direction applies**

- (4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,
- (5) A planning proposal must:
- (a) have regard to Planning for Bushfire Protection 2006,
  - (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
  - (c) ensure that bushfire hazard reduction is not prohibited within the APZ.
- (6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:
- (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
    - (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
    - (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
  - (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,
  - (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
  - (d) contain provisions for adequate water supply for fire fighting purposes,
  - (e) minimise the perimeter of the area of land interfacing the hazard which may be developed,
  - (f) introduce controls on the placement of combustible materials in the Inner Protection Area

#### Response

This draft amendment is consistent with Ministerial Direction 4.4 Planning for Bushfire Protection, and the Commissioner of the NSW RFS will be consulted as per the Gateway Determination. Any possible increases in development opportunities, including dwellings is negligible and is not beyond those available under LEP 2005.

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### **Direction 5.2 Sydney Drinking Water Catchment**

#### **Objective**

- (1) The objective of this Direction is to protect water quality in the Sydney drinking water catchment.

#### **Where this Direction applies**

- (2) This Direction applies to the Sydney drinking water catchment in the following local government areas:

Blue Mountains	Kiama	Sutherland
Campbelltown	Lithgow	Upper Lachlan
Cooma Monaro	Oberon	Wingecarribee
Eurobodalla	Palerang	Wollondilly
Goulburn Mulwaree	Shoalhaven	Wollongong

#### **When this Direction applies**

- (3) This Direction applies when a relevant planning authority prepares a planning proposal that applies to land within the Sydney drinking water catchment.

#### **What a relevant planning authority must do if this Direction applies**

- (4) A planning proposal must be prepared in accordance with the general principle that water quality within the Sydney drinking water catchment must be protected, and in accordance with the following specific principles:
- (a) new development within the Sydney drinking water catchment must have a neutral or beneficial effect on water quality, and
  - (b) future land use in the Sydney drinking water catchment should be matched to land and water capability, and
  - (c) the ecological values of land within a Special Area that is:
    - (i) reserved as national park, nature reserve or state conservation area under the National Parks and Wildlife Act 1974, or
    - (ii) declared as a wilderness area under the Wilderness Act 1987, or
    - (iii) owned or under the care control and management of the Sydney Catchment Authority, should be maintained.
- (5) When preparing a planning proposal that applies to land within the Sydney drinking water catchment, the relevant planning authority must:
- (a) ensure that the proposal is consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, and

- (b) give consideration to the outcomes of the Strategic Land and Water Capability Assessment prepared by the Sydney Catchment Authority, and
- (c) zone land within the Special Areas owned or under the care control and management of Sydney Catchment Authority generally in accordance with the following:

Land	Zone under Standard Instrument (Local Environmental Plans) Order 2006
Land reserved under the National Parks and Wildlife Act 1974	E1 National Parks and Nature Reserves
Land in the ownership or under the care, control and management of the Sydney Catchment Authority located above the full water supply level	E2 Environmental Conservation
Land below the full water supply level (including water storage at dams and weirs) and operational land at dams, weirs, pumping stations etc.	SP2 Infrastructure (and marked "Water Supply Systems" on the Land Zoning Map)

- and
- (d) consult with the Sydney Catchment Authority, describing the means by which the planning proposal gives effect to the water quality protection principles set out in paragraph (4) of this Direction, and
- (e) include a copy of any information received from the Sydney Catchment Authority as a result of the consultation process in its planning proposal prior to the issuing of a gateway determination under section 56 of the Environmental Planning and Assessment Act 1979.

#### **Consistency**

- (6) A planning proposal may be inconsistent with the terms of this Direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

#### Response

This draft amendment is consistent with Ministerial Direction 5.2 Sydney Drinking Water Catchment. A key element of LEP 2015 is the recognition and protection the National Park and environment which surround the urban areas of the City, including the Sydney drinking water catchment. These protections of the Sydney drinking water catchment will apply to the land subject to this planning proposal, and nothing in this planning proposal seeks to diminish or contradict these provisions.

A detailed review of the proposed changes for each of the clauses follows.

#### Clause 6.25

The amendment to this clause seeks to clarify that the land zoned E2 Environmental Conservation and the zone of the land allowing the development must be in one ownership and that certain ancillary uses will be permissible beyond the 10m limit. Provisions within the clause note that any developments under this clause will only be permissible with development consent and only when they are consistent with the environmental values of the land, appropriately sited and they provide an optimal site layout.

The land to which this clause applies could include land within the Sydney Drinking Water Catchment and Council proposes to consult with the Sydney Catchment Authority or as required by the Gateway.

#### Clause 4 of Schedule 1

This land is not within the Sydney Drinking Water Catchment.

#### Clause 1 to Schedule 2

This clause seeks to correct an unintended situation that has arisen with the amendment to the Codes SEPP on 22 February 2014. The introduction of this provision will result in a reinstatement of the long held Council position of not requiring development consent to demolish/remove, erect or replace side or rear dividing fences when complying with the prescribed provisions.

#### Clause 2 to Schedule 2

This clause is seeking to permit rainwater tanks on land in zone E4 – Environmental Living. There is unlikely to be any impact on the Sydney Drinking Water Catchment as there is a maximum capacity of 10,000litres and maximum 1m cut and fill and overflow should be connected to the existing stormwater system.

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## Direction 6.3 Site Specific Provisions

### **Objective**

- (1) *The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.*

### **Where this direction applies**

- (2) *This direction applies to all relevant planning authorities.*

### **When this direction applies**

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.*

### **What a relevant planning authority must do if this direction applies**

- (4) *A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:*
- (a) *allow that land use to be carried out in the zone the land is situated on, or*
  - (b) *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
  - (c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*
- (5) *A planning proposal must not contain or refer to drawings that show details of the development proposal.*

### **Consistency**

- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.*

### Response

This draft amendment is consistent with Ministerial Direction 6.3 Site Specific Provisions. This Direction applies to the proposed amendment to the existing Clause 4 of Schedule 1 for land at Grose Road Faulconbridge. This proposal is seeking to remove the time constraint within which the mining and restoration plan is prepared and substantially completed. There are no changes to the permissible land uses or development standards or additional requirements as described in this Direction.

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## Direction 7.1 Implementation of A Plan for Growing Sydney

### **Objective**

- (1) *The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.*

### **When this direction applies**

- (3) *This direction applies when a Relevant Planning Authority prepares a planning proposal.*

### **What a Relevant Planning Authority must do if this direction applies**

- (4) *Planning proposals shall be consistent with:*
- (a) *the NSW Government's A Plan for Growing Sydney published in December 2014.*

### Response

This draft amendment is consistent with Ministerial Direction 7.1 Implementation of A Plan for Growing Sydney. This planning proposal seeks to make a housekeeping amendment to reinstate provisions inadvertently removed, or to clarify ambiguities arising from the translation to LEP 2015. No changes to planning policy are proposed in this amendment.

The proposal is consistent with the Greater Sydney Region Plan (2018) and the Western City District Plan (2018).

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## **Section C - Environmental, Social and Economic Impact**

- 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

There is very little likelihood that critical habitat, threatened species, populations or ecological communities, or their habitats will be affected as a result of this Planning Proposal as it seeks only to make a housekeeping amendment reinstating provisions, or correcting ambiguities lost in the translation to LEP 2015. LEP 2015 contains strong controls for the protection of the environment, and nothing in this draft amendment seeks to diminish or contradict these provisions

- 8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

LEP 2015 contains sufficient controls for the protection of the environment, and nothing in this draft housekeeping amendment seeks to diminish or contradict these provisions.

- 9. Has the planning proposal adequately addressed any social and economic effects?**

This planning proposal seeks to make a housekeeping amendment to LEP 2015. There will be no social or economic effect as a result of this planning proposal. It is proposed to correct minor errors and improve the operation and clarity of existing clauses.

## **Section D - State and Commonwealth Interests**

- 10. Is there adequate public infrastructure for the planning proposal?**

This planning proposal only seeks to make a housekeeping amendment to LEP 2015. Nothing proposed in this planning proposal would increase pressure on existing infrastructure or generate demand for additional public infrastructure.

- 11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with State and Commonwealth public authorities will be undertaken in accordance with the gateway determination. It is not anticipated that there would be anything contained in the proposed in this housekeeping amendment that would be a significant concern to State or Commonwealth authorities.

## **PART 4 MAPPING**

There are no mapping changes included in the Planning Proposal.

## PART 5 COMMUNITY CONSULTATION

Council will consult with NSW Rural Fire Service as required by Ministerial Direction 4.4 Planning for Bushfire Protection and prior to public consultation.

Council also proposes to consult with the Sydney Catchment Authority during community consultation.

Written notification of the community consultation will be sent to the owners of land affected by Clause 4 of Schedule 1. An advertisement will be placed in the local newspaper and material will be available on Council's *Have Your Say* section on Council's website for the duration of the community consultation.

The Planning Proposal is considered to be low impact and duration of the community consultation is therefore suggested to be 14 days.

The consultation and exhibition process will be conducted in accordance with the Gateway Determination.

## PART 6 PROJECT TIMELINE

Council does not anticipate any significant issues arising from community consultation that would affect the project timeline. A nominal time period for the preparation, exhibition, and making of the amendment is:

July 2018	Planning Proposal reported to the Local Planning Panel for comment
August 2018	Planning Proposal reported to the Council
September 2018	Submission of planning proposal to DP&E (for the GSC) for 'gateway review' of draft Amendment 11 to LEP 2015
October 2018	Gateway determination issued
October – November 2018	RFS consultation required by gateway determination
November – December 2018*	Public exhibition of draft Amendment 11 to LEP 2015
January 2019	Council review of submissions to draft Amendment 11 to LEP 2015
February 2019	Report prepared for the Council to consider the result of the community consultation including any changes to this amendment.  Planning Proposal and relevant supporting information forwarded to PC to be made under delegation.
March - April 2019	Draft Amendment 11 to LEP 2015 to be made

\* Public exhibition will be undertaken in accordance with Department and Council guidelines and will avoid the Christmas/New Year holiday period or be extended as appropriate.

## PART 7 ATTACHMENTS

Attachment	
1	Comments from the Local Planning Panel – <i>(to be attached)</i>
2	Council business paper and endorsed minutes – <i>(to be attached)</i>