

ITEM NO: 15

SUBJECT: AMENDMENT 11 TO LEP 2015 (HOUSEKEEPING)

FILE NO: F11178 - 18/155082

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council notes the report and the recommendation of the Local Planning Panel;*
 2. *That the Council endorses the Draft Planning Proposal, amended in accordance with the advice of the Local Planning Panel, to be known as Blue Mountains Local Environmental Plan 2015 (Amendment No. 11) prepared in accordance with the provisions of Section 3.33 of the Environmental Planning and Assessment Act, 1979;*
 3. *That the Council refers the Draft Planning Proposal to the Greater Sydney Commission or delegate requesting a Gateway Determination in accordance with the provisions of Section 3.34 of the Environmental Planning and Assessment Act, 1979;*
 4. *That the Council requests Written Authorisation to Exercise Delegation over the Draft Planning Proposal in accordance with clause 2.4 of the Environmental Planning And Assessment Act 1979;*
 5. *That the Council requests the Greater Sydney Commission or delegate that the Draft Planning Proposal designate the Planning Proposal as low impact;*
 6. *That the Council processes the Planning Proposal in accordance with the Gateway Determination issued under the provisions of Section 3.34 of the Environmental Planning and Assessment Act, 1979;*
 7. *That the Council receives a report, subject to the Gateway Determination, at the conclusion of the notification period to enable consideration of submissions made to Blue Mountains Local Environmental Plan 2015 Amendment 11; and*
 8. *That the Council delegates to the General Manager the authority to make minor amendments to the adopted draft Amendment 11 to Local Environmental Plan 2015 that may arise after the formal adoption of this planning proposal, subject to such amendments maintaining the policy intent of the draft plan.*
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Report by Director Development & Customer Service:

Reason for report

The reason for this report is to seek endorsement from the Council to proceed with a Planning Proposal (Draft Amendment 11 to LEP 2015) and to advise of the recommendations of the Local Planning Panel to the proposal. The Planning Proposal seeks to maintain the planning intention of provisions that were included in LEP 1991 or LEP 2005, but which when translated into LEP 2015, did not maintain this intent. The amendments

relate to four matters. These are to allow for fences and rainwater tanks as exempt development on land zoned E4 Environmental Living (where certain circumstances are met); to clarify the conditions and circumstances where development for the purpose of a dwelling can extend by 10m into E2 zoned land; and lastly to refine an existing site specific clause in Schedule 1 *Additional permitted uses*.

Background

Local Planning Panel Advice

As of 1 June 2018, it is a state government requirement that all Planning Proposals be referred to the Local Planning Panel for advice. At its meeting on the 23 July 2018, the Local Planning Panel recommended that the draft planning proposal (Attachment 1) to amend *Blue Mountains Local Environmental Plan 2015* (LEP 2015) progress to the Council for consideration. The complete recommendation is as follows:

That the Blue Mountains Local Planning Panel supports the proposal and provide the following advice/amendments:

- *Addition Page 6 – clause 4(3)(b) add “to the satisfaction of Council” at the end of the clause*
- *Correction Page 7 – item 14 “If a lot has a frontage to a secondary road or roads, sub-clause (12) (13) only applies to 50% of the length of all contiguous secondary road boundaries, measured from the corner with the primary road boundary.”*
- *Correction Page 7 – item 15 “Sub-clause (12)(b) (13)(b) does not apply to the part of the fence along the side boundary and within the setback area to the primary road.”*
- *Recommend that the Draft Planning Proposal for Amendment 11 to Blue Mountains Local Environmental Plan 2015 progress to the Council for consideration.*

Reason for Recommendation:

The amendment reduces uncertainty, improves efficiency and practicality of the Blue Mountains Local Environmental Plan 2015 (LEP), and will make the LEP consistent with the State Environmental Planning Policy (Exempt and Complying Development) 2008.

[Recommendation of Local Planning Panel 23 July 2018]

Amendments suggested by the Local Planning Panel of 23 July 2018 have been incorporated into the attached Planning Proposal.

Planning Proposal Process:

Should the Council endorse the Planning Proposal, this commences the process of amending Blue Mountains LEP 2015. Stages in the process include the following:

- The Planning Proposal is referred to the Greater Sydney Commission;
- A Gateway Determination is then issued by the Department of Planning;
- The Gateway Determination details consultation requirements, including with state agencies and the local community;
- Following this consultation period, the Planning Proposal is reviewed and will be reported back to Council for consideration;
- The final stage of the amendment will involve the Department of Planning reviewing the final proposal, reports and recommendations.
- It is expected this process will take between 6 and 12 months.

Discussion of Proposed Amendments

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 zone is very restrictive 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 provisions encapsulated in clause 6.25 are transferred from LEP 2005 and provide flexibility for the location of dwelling houses and ancillary development on land in an environmental protection zone however certain elements of this clause require further clarification, particularly around the location of the 10m extension.

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.

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 and are in addition.

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.

Removal of sunset requirement and site restoration (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) requires 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 2500m² 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 and to the satisfaction of Council.

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).

Please note: The subject land has an existing use identified in Table 1 of Planning NSW's *'Managing Land Contamination Planning Guidelines'*. Consistency with the requirements of SEPP 55 Remediation of Land is addressed in the attached Planning Proposal.

Adding fences as Exempt development (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 on land in zone E4, 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.

Adding rainwater tanks (above ground) as Exempt development (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 1200m2 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 final stages of preparation of this Planning Proposal, the Department of Planning (the Department) placed a Housekeeping amendment to the Codes SEPP on public exhibition. The amendment includes provisions which match the amendments to Schedule 2 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 proposed, this amendment to LEP 2015 will be redundant.

Delegated authority

The Department has returned some of the responsibility for plan making back to Councils. These changes give local councils responsibility for LEPs of local and minor significance. The delegation operates in respect of a draft LEP on receipt by council of a Written Authorisation to Exercise Delegation and is issued as part of the Gateway Determination. The proposal is considered to be low impact and for this reason Council will seek delegated authority in accordance with clause 2.4 of the *Environmental Planning and Assessment Act 1979*.

Consultation

The Gateway Determination is issued by the Greater Sydney Commission (GSC) and prescribes the community consultation that must be undertaken. Planning Proposals require a consultation period of 28 days, however the consultation period may be tailored for specific proposals and 'low impact proposals' may only require an exhibition period of only 14 days.

The Department guideline, *"A guide to preparing local environmental plans"* advises that a 'low' impact Planning Proposal is:

- consistent with the pattern of surrounding land use zones and/or land uses;
- consistent with the strategic planning framework;
- presents no issues with regard to infrastructure servicing;
- not a principal LEP;
- does not reclassify public land.

It is considered this proposal meets the 'low impact' criteria as above and a request will be made to the Greater Sydney Commission or their delegate to confirm this designation.

Sustainability Assessment

Effects	Positive	Negative
Environmental	The draft amendment includes amendments prepared to reinstate the intended planning outcome under LEP 2015 and maintain the development opportunity available to affected properties prior to the making of LEP 2015.	Nil
Social	Nil	Nil
Economic	Nil	Nil
Governance	The Planning Proposal will follow the Gateway process for consulting and considering the Planning Proposal.	Nil

Financial implications for the Council

All costs including staff time and resources required in the processing of this LEP amendment is accommodated within existing operational budgets.

Legal and risk management issues for the Council

There are no identified legal or risk management implications for the Council as a result of making this LEP amendment. To amend LEP 2015 in the way proposed (maintaining policy intent), reduces any potential risk for Council to be challenged on the loss of development opportunity.

External consultation

External consultation has not yet been conducted however it will be undertaken as prescribed in the Gateway Determination issued by the Department.

Conclusion

The planning proposal seeks to make amendments to LEP 2015 through minor changes to the drafting of certain clauses. These amendments intend to reinstate the planning intent of the relevant under LEP 1991 or LEP 2005, some of which was lost in the translation of these provisions to LEP 2015. The draft Amendment also seeks to refine an existing site specific clause in Schedule 1 and incorporate certain provisions for fences and rainwater tanks from the State Environmental Planning Policy (Exempt and Complying Development 2008 into LEP 2015.

The Planning Proposal has been prepared in accordance with *"A guide to preparing local environmental plans"* and will be submitted to the Department to formally commence the

Gateway Process under Section 3.34 of the *Environmental Planning and Assessment Act, 1979*. Should the recommendations of this report be endorsed, the Council will seek a Gateway Determination of the Planning Proposal, and once received, will undertake all requirements of that determination, including all public and agency consultations. A further report will be prepared for the Council following this consultation.

ATTACHMENTS/ENCLOSURES

1	Planning Proposal - Draft Amendment 11 to LEP 2015	18/183172	Enclosure
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