

Blue Mountains Housekeeping (Amendment 4)

Proposal Title : **Blue Mountains Housekeeping (Amendment 4)**

Proposal Summary : **The proposal seeks to make a number of minor amendments to improve the overall accuracy and operation of the Blue Mountains Local Environmental Plan (LEP) 2015.**

PP Number : **PP_2016_BLUEM_002_00**

Dop File No : **16/10813**

Proposal Details

Date Planning **19-Aug-2016**

Proposal Received :

LGA covered :

Blue Mountains

Region : **Metro(Parra)**

RPA :

Blue Mountains City Council

State Electorate : **BLUE MOUNTAINS**

Section of the Act :

55 - Planning Proposal

LEP Type : **Housekeeping**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Various - LGA wide**

DoP Planning Officer Contact Details

Contact Name : **Alicia Hall Hall**

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RPA Contact Details

Contact Name : **Lee Morgan**

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DoP Project Manager Contact Details

Contact Name : **Adrian Hohenzollern**

Contact Number : **02986015**

Contact Email : **adrian.hohenzollern@planning.nsw.gov.au**

Land Release Data

Growth Centre :

Release Area Name :

Regional / Sub

Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

:

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment : The Department's Lobbyist Contact Register has been checked on 16 August 2016 and there are no records of contact with lobbyists in relation to this proposal.

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment : To the best of the knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region West (Parramatta) has not met with any lobbyists in relation to this proposal, nor has the Director been advised of any meetings between other departmental officers and lobbyists concerning this proposal.

Supporting notes

Internal Supporting Notes : The planning proposal was originally received by the Department of Planning and Environment on 11 August 2016. Additional information was sought from Council in relation to mapping and Council resolution details. Council provided the requested information on 19 August 2016. The date of receipt has been amended accordingly.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The planning proposal seeks to make a number of small 'housekeeping' amendments to the Blue Mountains LEP 2015. These amendments seek to improve the legibility of certain clauses and to correct minor errors, including the restoration of a number of heritage items erroneously omitted from the final version of the LEP. The overall intent of the proposal is ensure accuracy, clarity and to facilitate the overall operation of the BMLEP 2015.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The proposal seeks to make a number of amendments to the Blue Mountains LEP 2015. The proposed amendments are as follows:

1. AMEND CLAUSE 4.4A SITE COVERAGE AND LANDSCAPED AREA AND CLAUSE 6.1(5) IMPACT ON ENVIRONMENTALLY SENSITIVE LAND

The proposal seeks to amend the wording of these clauses to remove ambiguity between the terms 'lot', 'area' and 'site'. Where practical, the term 'lot' will be replaced by the word 'land' to provide clarity with regards to the intent of these clauses.

The proposal also seeks to amend subclause (7) of clause 4.4A Site coverage and landscaped area to ensure that subclause (7) captures the whole site. At present the clause only applies to land E4 Environmental Living. This has particular relevance as a number of sites across the LGA contain land zoned E2 Environmental Conservation and E4 Environmental Living. As currently worded subclause (7) (exert below) only captures the E4 environmental zoned portions of the site. The inclusion of E2 Environmental Conservation zoned land will ensure that the clause is operating as intended, to capture the whole site.

The inclusion of E2 land in subclause (7) is considered appropriate as the intentions of this clause are consistent with the objectives for land zoned E2 Environmental Conservation.

The wording as drafted by Council has been included as part of this proposal, however the wording may be altered as it will be subject to legal drafting.

CURRENT WORDING FOR CLAUSE 4.4A SITE COVERAGE AND LANDSCAPED AREA AS FOUND IN THE BMLEP 2015:

4.4A Site coverage and landscaped area

(1) The objective of this clause is to manage the proportion of site coverage to lot size for the purpose of retaining landscaped areas that contribute to the landscape setting and catchment health of the area.

(2) This clause applies to land in the following zones:

- (a) Zone E3 Environmental Management,
- (b) Zone E4 Environmental Living.

(3) The maximum site coverage for a lot to which this clause applies that has an area of less than 1,000 square metres is 30% or 160 square metres, whichever is greater.

(4) The maximum site coverage for a lot to which this clause applies that has an area of at least 1,000 square metres, but less than 2,000 square metres is:

- (a) 300 square metres, and
- (b) an additional number of square metres equal to 10% of the amount by which the site area exceeds 1,000 square metres, but not exceeding an additional 100 square metres.

(5) The maximum site coverage for a lot to which this clause applies that has an area of 2,000 square metres or more is:

- (a) 400 square metres, and
- (b) an additional number of square metres equal to 5% of the amount by which the site area exceeds 2,000 square metres, but not exceeding a site coverage of 2,500 square metres.

(6) Despite subclauses (3) and (4), development consent may be granted for development that exceeds the maximum site coverage permitted by those subclauses if a report prepared by a suitably qualified person demonstrates that the development would have a beneficial effect on stormwater management by incorporating measures such as infiltration and detention systems.

(7) Development consent must not be granted to development on land in Zone E4 Environmental Living unless the landscaped area of the land is at least 60%.

PROPOSED WORDING FOR CLAUSE 4.4A SITE COVERAGE AND LANDSCAPE AREA:

A copy of the clause 4.4A with the changes highlighted can be found on page four (4) of the planning proposal.

4.4A Site coverage and landscaped area

(1) The objective of this clause is to manage site coverage for the purpose of retaining landscaped areas that contribute to the landscape setting and catchment health of the area.

(2) This clause applies to land in the following zones:

- (a) Zone E3 Environmental Management,
- (b) Zone E4 Environmental Living.

(3) The maximum site coverage for land to which this clause applies that has an area of less than 1,000 square metres is 30% or 160 square metres, whichever is greater.

(4) The maximum site coverage for land to which this clause applies that has an area of at least 1,000 square metres, but less than 2,000 square metres is:

- (a) 300 square metres, and
- (b) an additional number of square metres equal to 10% of the amount by which the area of land in Zone E3 and Zone E4 exceeds 1,000 square metres, but not exceeding an additional 100 square metres.

(5) The maximum site coverage for land to which this clause applies that has an area of 2,000 square metres or more is:

- (a) 400 square metres, and
- (b) an additional number of square metres equal to 5% of the amount by which the area of land in Zone E3 and Zone E4 exceeds 2,000 square metres, but not exceeding a site coverage of 2,500 square metres.

(6) Despite subclauses (3) and (4), development consent may be granted for development that exceeds the maximum site coverage permitted by those subclauses if a report prepared by a suitably qualified person demonstrates that the development would have a beneficial effect on stormwater management by incorporating measures such as infiltration and detention systems.

(7) Development consent must not be granted to development on a lot which includes land in Zone E4 Environmental Living unless, following the completion of the proposed development, either :

- (a) the pervious surface of the lot will not be reduced; or
- (b) at least 60% of the lot, including any part of the lot in Zone E2 Environmental Conservation, will compromise pervious surfaces or landscaped areas.

(8) For the purposes of this clause 4.4A the term 'pervious surface' means a land surface which allows water to infiltrate into the sub-soil but also includes the area of any land covered by rainwater tanks, swimming pools and unroofed areas of spaced decking (where the timber flooring on that decking allows water to pass through the decking onto soil below the decking).

CURRENT WORDING FOR CLAUSE 6.1 IMPACT ON ENVIRONMENTALLY SENSITIVE LAND AS FOUND IN THE BMLEP 2015:

6.1 Impact on environmentally sensitive land

(5) Development on environmentally sensitive land in Zone E3 or Zone E4
Development consent must not be granted for development (other than development for the purpose of public utility services) on a lot created under this Plan being land in Zone E3 Environmental Management or Zone E4 Environmental Living that contains environmentally sensitive land unless the consent authority is satisfied that the proposed

development, including any clearing required for an asset protection zone, would be designed, sited and managed to avoid any adverse environmental impact on the environmentally sensitive land.

PROPOSED WORDING FOR CLAUSE 6.1 IMPACT ON ENVIRONMENTALLY SENSITIVE LAND:

A copy of the clause 6.1 with the changes highlighted can be found on page four (4) of the planning proposal.

6.1 Impact on environmentally sensitive land

(5) Development on environmentally sensitive land in Zone E3 or Zone E4

Development consent must not be granted for development (other than development for the purpose of public utility services) on land within a lot created under this Plan being land in Zone E3 Environmental Management or Zone E4 Environmental Living that contains environmentally sensitive land unless the consent authority is satisfied that the proposed development, including any clearing required for an asset protection zone, would be designed, sited and managed to avoid any adverse environmental impact on the environmentally sensitive land.

2. AMEND CLAUSE 6.28 RURAL AND NATURE BASED TOURIST FACILITIES

The proposal seeks to amend this clause to remove the word solely from the definition of 'small tourist facility' as the use of the word solely would prohibit operations that employ ancillary personnel, and this is not the intention of this clause.

CURRENT WORDING AS FOUND IN THE BMLEP 2015

small tourist facility means a tourist facility that is managed and operated solely by the owner or a site manager who resides on the land.

PROPOSED WORDING:

small tourist facility means a tourist facility that is managed and operated by the owner or a site manager who resides on the land.

3. RESTORE HERITAGE ITEMS ERRONEOUSLY OMITTED FROM SCHEDULE 5 ENVIRONMENTAL HERITAGE AND THE REMOVAL OF A HERITAGE CONSERVATION AREA

ITEMS TO BE RESTORED TO SCHEDULE 5 ENVIRONMENTAL HERITAGE

The proposal seeks to restore a number of heritage items which are shown on the Heritage maps but missing from Schedule 5 Environmental heritage. This proposal seeks to reinstate the following heritage items to Schedule 5:

- Item number BX009 - Fibro House
- Item number MV017 - Little Zig Zag
- Item Number MY006 - Lockyer's Pass
- Item Number MV040 - Rossmoyne
- Item Number WF012 - Strathmore

ITEM TO BE REMOVED FROM SCHEDULE 5 ENVIRONMENTAL HERITAGE

Heritage Conservation Area (HCA) LA029 Leura Railway Parade Precinct, is listed in Schedule 5 Environmental heritage but does not appear on the heritage maps because it is within an area wholly deferred from the LEP 2015.

This proposal seeks to remove this HCA from Schedule 5 to correctly reflect its deferred status.

4. AMEND SCHEDULE 1 ADDITIONAL PERMITTED USES

Lots 77 - 79 DP 839262 as identified in item 13 in Schedule 1 Additional permitted uses does not exist and therefore is not a legal lot.

Council indicates that they have received legal advice that confirms that the Lot does not exist and therefore it is not called up by the subclause.

To avoid confusion, the proposal seeks to remove the reference to Lots 77 - 79 DP 839262 from Item 13.

For reference - Clause 13 is listed below:

Item 13 - Schedule Additional permitted uses

13 Use of certain land at 80–104 Railway Parade, Wentworth Falls

(1) This clause applies to land at 80–104 Railway Parade, Wentworth Falls, being Lots 1–67, 73–89 and 90–91, DP 7988, Lot 92, DP 7988 (formerly Mary, King and George Streets) and Lots 77–79, DP 839262.

(2) Development for the purpose of a dwelling house is permitted with development consent if all the lots are consolidated into a single lot.

5. INCLUSION OF AN ADDITIONAL KEY SITES MAP - KYS_005EA

An additional Key Sites map - KYS_005EA is proposed to be created to capture affordable rental housing areas in the area covered by this map.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General?

b) S.117 directions identified by RPA :

* May need the Director General's agreement

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

4.4 Planning for Bushfire Protection

5.2 Sydney Drinking Water Catchments

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SREP No. 20 - Hawkesbury–Nepean River (No. 2 - 1997)

SEPP (Affordable Rental Housing) 2009

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

The planning proposal is consistent with all identified section 117 Directions except as follows;

S117 DIRECTIONS

4.4 PLANNING FOR BUSHFIRE PROTECTION

As the proposal affects land that is or is in proximity to mapped bushfire prone land as

identified in the Bushfire Prone Land map this Direction applies.

The planning proposal does not seek to increase development opportunities, however, to ensure consistency with Direction 4.4 Clause (4) the relevant planning authority is to consult with the Rural Fire Service following receipt of Gateway determination. Conditioned accordingly.

5.2 Sydney Drinking Water Catchment

This direction seeks to protect the Sydney drinking water catchment. The proposed site coverage and landscaped controls seek to limit site coverage which will limit stormwater runoff into waterways. The proposal is considered generally consistent with the intention of this Direction.

STATE ENVIRONMENTAL PLANNING POLICIES

The planning proposal is consistent with all relevant SEPPs.

SEPP NO 44 - KOALA HABITAT PROTECTION

This proposal is for a minor housekeeping amendment to the Blue Mountains LEP 2015. Nothing in the planning proposal is inconsistent with the requirements of this SEPP.

SEPP (SYDNEY DRINKING WATER CATCHMENT) 2011

This SEPP seeks to protect Sydney's water catchments to provide high quality water. This planning proposal is for minor housekeeping amendments and there is nothing in this proposal that diminishes the provisions of this SEPP. The planning proposal is considered consistent with this SEPP.

SEPP (AFFORDABLE RENTAL HOUSING) 2009

This SEPP seeks to facilitate the provision of affordable rental housing. One of the minor housekeeping amendments proposed is the capture of an affordable rental housing area that was incorrectly mapped during public exhibition. The proposal seeks to include affordable rental housing on key sites map KYS_005EA. This proposal is considered consistent with this SEPP.

SREP NO 20. HAWKESBURY-NEPEAN RIVER (NO 2. 1997)

The proposal is considered consistent with SREP No 20. Nothing in the planning proposal seeks to diminish or contradict these provisions.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council have proposed that the planning proposal will be forwarded to the Rural Fire Service for comment.**

Due to the minor nature of the planning proposal it is recommended that the proposal be publicly exhibited for a minimum of 14 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment**Principal LEP:**

Due Date : **December 2015**

Comments in relation to Principal LEP : **Blue Mountains Local Environmental Plan was published to the NSW Legislation website on 21 December 2015 and came into effect 8 weeks after publication on 15 February 2016**

Assessment Criteria

Need for planning proposal : **A planning proposal is considered the best way to achieve the numerous minor 'housekeeping' amendments to the Principle LEP.**

Consistency with strategic planning framework : **A PLAN FOR GROWING SYDNEY**
A Plan for Growing Sydney provides a pathway for development across the Sydney Metropolitan Region with a focus on livability, economic growth and environmental protection with a focus on the location of housing, infrastructure, employment and open space.

The proposed amendments are generally consistent with A Plan for Growing Sydney and will not hinder the attainment of these goals.

Environmental social economic impacts : **ENVIRONMENTAL**
The planning proposal is unlikely to result in any adverse environmental impacts or have any impact on critical habitat or threatened species.

SOCIAL AND ECONOMIC

It is anticipated that the amendments proposed as part of this proposal will have a positive impact on the overall social and economic wellbeing of the Blue Mountains by ensuring the Blue Mountains LEP 2015 is up to date, accurate, clear and consistent with current legislation.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) **NSW Rural Fire Service**

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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
1. Cover Letter - Blue Mountains Planning Proposal - Housekeeping (Amendment 4).pdf	Proposal Covering Letter	Yes
2. Blue Mountains Planning Proposal - Housekeeping (Amendment 4).pdf	Proposal	Yes
3. Council Report.pdf	Proposal	Yes
4. Council Resolution.pdf	Proposal	Yes
5. Key Sites Map - KYS_005EA.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.1 Environment Protection Zones**
 2.3 Heritage Conservation
 3.1 Residential Zones
 4.4 Planning for Bushfire Protection
 5.2 Sydney Drinking Water Catchments

Additional Information : **SECTION 117 DIRECTIONS**

The planning proposal is considered consistent with all identified section 117 Directions.

To ensure consistency with s117 Direction 4.4 Planning for Bushfire, consultation with the Rural Fire Service has been conditioned.

The delegates approval is recommended.

DELEGATION OF PLAN MAKING FUNCTION

Blue Mountains City Council have requested delegation of the plan-making function in relation to this proposal. Given the minor nature of the proposal, it is considered appropriate for the authorisation to be issued in this instance.

RECOMMENDATION AND GATEWAY CONDITIONS

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It is recommended that the planning proposal proceeds, subject to the following conditions:

1. Prior to undertaking public exhibition Council in relation to S117 Direction 4.4 Planning for Bushfire Protection, Council is required to forward the planning proposal to the Rural Fire Service (RFS). If the RFS requires any additional information, or specifies any additional matters to be addressed, the planning proposal is to be updated accordingly.

2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:

(a) the planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013) and must be made publicly available for a minimum of 14 days; and

(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).

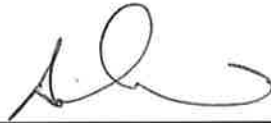
3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

4. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

Supporting Reasons :

The planning proposal is supported as it seeks to ensure the Blue Mountains LEP 2015 is up to date, accurate, clear and consistent with current legislation.

Signature:



Printed Name:

ADRIAN HOHENEGGER

Date:

8/9/16