

ITEM NO: 22

SUBJECT: LEP 2015 DRAFT AMENDMENT 4 (HOUSEKEEPING)

FILE NO: F09791 - 16/74818

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council endorses the Draft Planning Proposal for a housekeeping amendment, to be known as Blue Mountains LEP 2015 (Draft Amendment No. 4) prepared in accordance with the provisions of Section 55 of the Environmental Planning and Assessment Act, 1979;*
 2. *That the Council refers the Planning Proposal to the Greater Sydney Commission or delegate requesting a Gateway Determination in accordance with the provisions of Section 56 of the Environmental Planning and Assessment Act, 1979;*
 3. *That the Council processes the Planning Proposal in accordance with the Gateway Determination issued under the provisions of Section 56 of the Environmental Planning and Assessment Act, 1979;*
 4. *That the Council, subject to reviewing the Gateway Determination, proceeds with the Planning Proposal and receive a report following the conclusion of the exhibition of the Draft Planning Proposal; and*
 5. *That the Council delegates to the General Manager (or their nominee) the authority to make minor amendments to the endorsed Draft Planning Proposal for a housekeeping amendment, to be known as Blue Mountains LEP 2015 (Draft Amendment No. 4) and associated maps, that may arise after the formal adoption of this planning proposal, subject to such amendments maintaining the policy intent of the draft amendment.*
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Report by Director, Development & Customer Services:**Reason for report**

This report seeks the Council's endorsement to proceed with a planning proposal (Attachment 1) to make a housekeeping amendment to LEP 2015. This planning proposal is not seeking to change any planning policy. It has been prepared to improve the wording of particular clauses to ensure they operate as intended, and to correct minor errors that have been identified since the making of the LEP.

Background

The purpose of this planning proposal is to make a housekeeping amendment to LEP 2015. Housekeeping amendments are typically made periodically to LEPs to address minor issues that arise through the use of the plan.

It has been 6 months since LEP 2015 was made, and it is an appropriate time address a number of issues that have been identified since the making of the plan through a housekeeping amendment.

The issues identified are typically a result of minor errors of description, anomalies flowing on from changes made in response to submissions or drafting changes that were made to the LEP by the Department of Planning & Environment (the Department) and the NSW Parliamentary Counsel (PC) prior to it being made.

The draft amendment proposes to improve the wording of clauses and correct minor errors to the following parts of the LEP as outlined:

- Improving the wording of Clause 4.4A & 6.1(5) to remove ambiguity between 'lot', 'area' and 'site' so that site coverage and landscaped area provisions operate as intended
- Clarifying the operation of Clause 6.28 Rural and nature based tourist facilities
- Restoring heritage listings incorrectly removed by PC in the process of making the LEP
- Correcting an erroneous Lot & DP reference in Schedule 1
- Adding map KYS_005EA to capture information formally contained on map FSR_005EA

Clause 4.4A

This clause concerns site coverage and landscaped areas provisions, specifically the calculation of landscaped area where it applies to split zoned lots. Wording changes prior to the finalisation of the LEP have created potential ambiguity in the clause. The exhibited draft plan was clear as to intent and meaning. The draft amendment seeks to clarify what parts of a lot are used to calculate site coverage and landscaped area, particularly with regard to parts of a lot zone E2 Environmental Conservation. Similarly, the wording of clause 6.1(5) is also proposed to be changed to clarify its application with regard to split zone lots.

Rural and nature based tourism facilities

The clause contains a definition of a *small tourist facility* that requires it to be run 'solely' by either an owner or site manager residing on site. The reference to 'solely' would prohibit operations that employ a small number of personnel, which is not the intention of the clause. The draft amendment proposes to remove the word 'solely' to require such facilities to be run by an owner or site manager that resides on site, without restricting such facilities from employing additional personnel.

Heritage listings

A number of heritage items which are shown on the LEP 2015 heritage maps and which were contained in Schedule 5 of the LEP adopted by Council and submitted to the Department are missing from Schedule 5 of the made version of LEP 2015. This draft amendment is proposing to correct this omission by reinstating these items to Schedule 5.

Due to areas of the LGA being deferred from LEP 2015 there is also a heritage item which was removed from schedule 5 because part of the lot is deferred, but which should be reinstated in the LEP for the part of the lot which is not deferred.

Similarly there is a Heritage Conservation Area (HCA) which needs to be removed from LEP 2015 because the area it covers has been wholly deferred from the LEP.

It has also been identified that the classification of a number of heritage items has been incorrectly list, as 'State' instead of 'local'.

Schedule 1

It has been identified that one of the items, (13), in Schedule 1 contains reference to a lot and DP that does not exist. Because the subclause requires consolidation of all listed lots Council has sought legal advice which has confirmed that because the erroneously listed lot

and DP is not actually a lot it is therefore not called up by the subclause. However the draft amendment proposes to remove the erroneous reference to Lots 77–79, DP 839262 to avoid any confusion.

Additional Key Site map - KYS_005EA

Key Site map KYS_005EA does not currently exist in the suite of LEP 2015 maps, but is required to capture mapping information that was intended to be part of LEP 2015.

In accordance with the Department's mapping guidelines, map sets only contain map tiles that contain any information pertaining to that map set i.e. map tiles which would be blank are not included, for example, the Land Zone map set includes every map tile, but for map sets such as Key Sites, only those tiles that contain areas identified as key sites are included.

During public exhibition of the LEP, map KYS_005EA did not exist because there were no key sites identified in that area covered by that map. Following exhibition, the affordable rental housing areas which were shown on the FSR map set during exhibition were required by the Department to be moved to the Key Site map set. This change required the creation on a new map, KYS_005EA, to cover information transferred from the FSR map set to the Key Site map set. This was not identified at the time, and whilst the data which is used to generate the maps was correctly altered, a new map tile was not created, and thus was not made as part of LEP 2015.

This planning proposal proposes to amend this error by creating map KYS_005EA to capture the information that was mapped in the publically exhibited version of the LEP on map FSR_005EA.

Sustainability Assessment

Effects	Positive	Negative
Environmental	The draft amendment includes improvements to wording to clarify controls related to site coverage and landscaped area in environmental zones, ensuring that the desired environmental outcome is able to be achieved through the DA process.	Nil
Social	Nil	Nil
Economic	By improving the LEP and making it clearer and thus simpler to interpret there is potentially a time, and associated cost, saving for the development assessment process.	Nil
Governance	The Planning Proposal will follow the Department of Planning & Infrastructures 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 these LEP amendments 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 finalising this LEP amendment.

To not proceed with this draft amendment could open Council to the risk that the ambiguity of the subject LEP clauses could result in development outcomes that were not intended in the making of LEP 2015.

External consultation

As part of the LEP amendment process, public authority and community consultation will be undertaken. The Gateway Determination issued by Department of Planning and Environment will prescribe the extent and time frames for such consultation.

Conclusion

A Planning Proposal for a housekeeping amendment to LEP 2015 has been prepared in line with the requirements of the Department of Planning and Environment. The Planning Proposal will be submitted to the Department of Planning and Environment to formally commence the Gateway Process under Section 56 of the Environmental Planning and Assessment Act, 1979. The Council will then progress the Planning Proposal in accordance with the Gateway Determination received including all public exhibition requirements.

ATTACHMENTS/ENCLOSURES

1	Planning Proposal - Draft LEP 2015 Amendment 4 Housekeeping	16/120997	Attachment
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