



Planning,  
Industry &  
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IRF21/2650

## Gateway determination report – PP-2021-3711

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Blue Mountains LEP 2015 Draft Amendment 13 –  
Amendment to Clause 1.9

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# Contents

<b>1</b>	<b>Planning Proposal .....</b>	<b>1</b>
1.1	Overview and objectives of planning proposal .....	1
1.2	Explanation of provisions.....	2
1.3	Site description and surrounding area .....	2
1.4	Mapping.....	3
<b>2</b>	<b>Need for the planning proposal.....</b>	<b>3</b>
<b>3</b>	<b>Strategic assessment.....</b>	<b>4</b>
3.1	Regional Plan .....	<b>Error! Bookmark not defined.</b>
3.2	District Plan [If relevant].....	4
3.3	Local .....	4
3.4	Local planning panel (LPP) recommendation.....	5
3.5	Section 9.1 Ministerial Directions .....	6
3.6	State environmental planning policies (SEPPs) .....	7
<b>4</b>	<b>Site-specific assessment .....</b>	<b>8</b>
4.1	Environmental.....	8
4.2	Social and economic .....	9
4.3	Infrastructure .....	9
<b>5</b>	<b>Consultation.....</b>	<b>9</b>
5.1	Community .....	9
5.2	Agencies.....	9
<b>6</b>	<b>Timeframe.....</b>	<b>9</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>10</b>
<b>8</b>	<b>Assessment Summary .....</b>	<b>10</b>
<b>9</b>	<b>Recommendation.....</b>	<b>10</b>

# 1 Planning proposal

## 1.1 Overview

**Table 1 Planning proposal details**

<b>LGA</b>	<b>Blue Mountains</b>
<b>PPA</b>	<b>Blue Mountains Council</b>
<b>NAME</b>	<b>Blue Mountains LEP 2015 Draft Amendment 13 – Amendment to Clause 1.9</b>
<b>NUMBER</b>	<b>PP-2021-3711</b>
<b>LEP TO BE AMENDED</b>	<b>Blue Mountains Local Environmental Plan 2015</b>
<b>ADDRESS</b>	<b>LGA-wide</b>
<b>DESCRIPTION</b>	<b>N/A</b>
<b>RECEIVED</b>	<b>17/06/2021</b>
<b>FILE NO.</b>	<b>IRF21/2650</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

This planning proposal seeks to deliver two key actions identified in Council's Local Strategic Planning Statement , namely:

*1.3 Council will seek an exemption from the Low Rise Medium Density Housing Code in State Environmental Planning Policy (Exempt and Complying Codes) 2008, to ensure local stormwater management controls are maintained and continue to protect the receiving environment of the Blue Mountains World Heritage Area.*

*5.7 Council will seek an exemption from the Low Rise Medium Density Housing Code in State Environmental Planning Policy (Exempt and Complying Codes) 2008, to ensure local controls are maintained to protect the character of the Blue Mountains*

The planning proposal contains an objective and intended outcomes that adequately explain the intent of the proposal, with the following aim:

- to exclude the Blue Mountains LGA from the application of the Low Rise Housing Diversity Code (Low Rise Code) in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

The objective of this planning proposal is clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to exclude the application of the Low Rise Code to relevant land under Blue Mountains LEP 2015. This is proposed by amending clause 1.9 *Application of SEPPs* in the Codes SEPP.

Should the proposal proceed to finalisation, the manner in which exclusion is achieved will be a matter for legal drafting and may not follow the suggested amendment as shown in the planning proposal. The explanation, however, is considered to be adequate for exhibition purposes.

## 1.4 Site description and surrounding area

The planning proposal applies to land identified on the Land Application Map under the Blue Mountains LEP 2015 (Figure 1 below).

The planning proposal does not apply to several areas in the Blue Mountains LGA which are currently deferred from the Blue Mountains LEP 2015 and subject to Blue Mountains LEP 2005 and Blue Mountains LEP 1991.

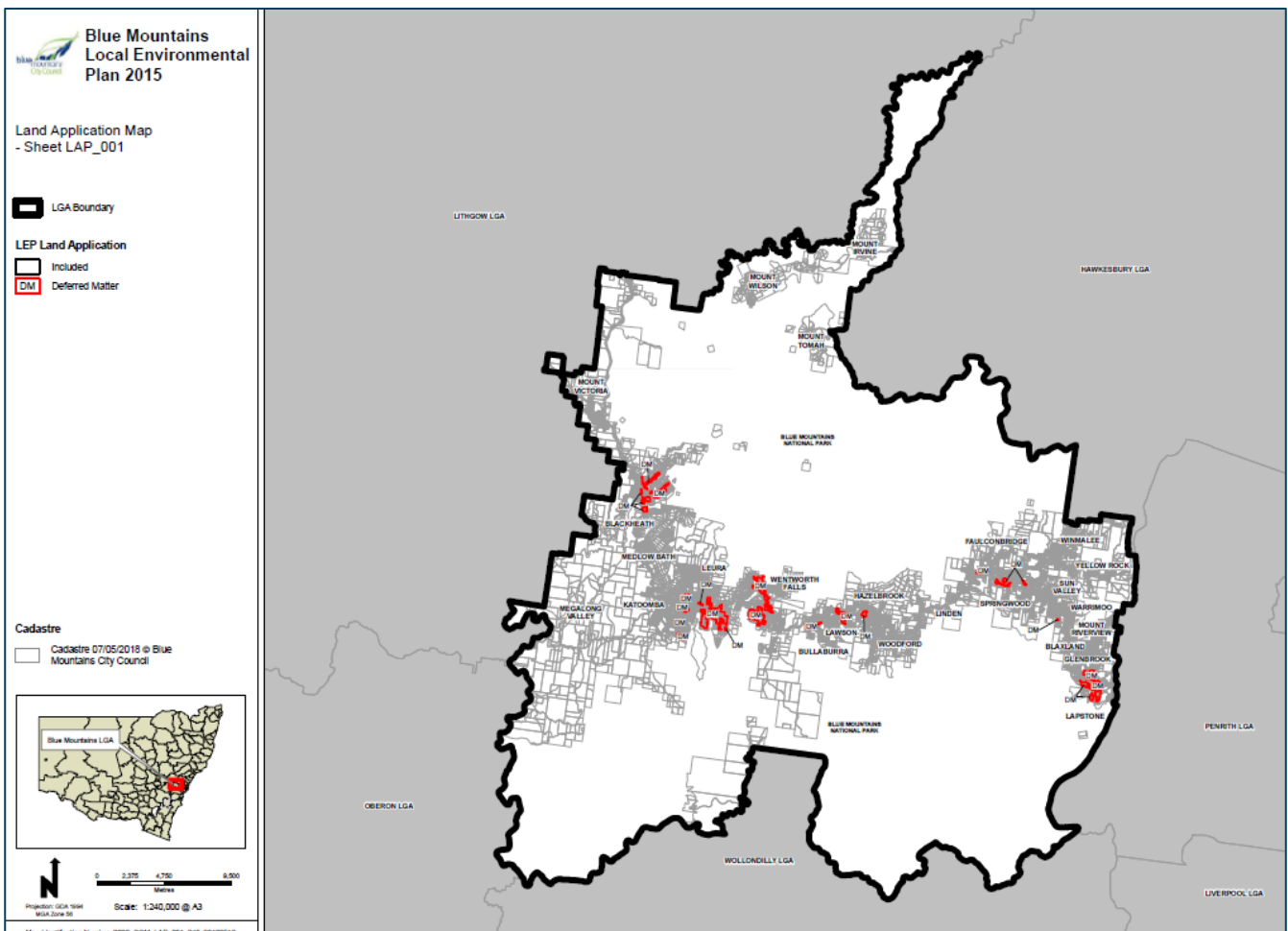


Figure 1 Blue Mountains Land Application Map (source: NSW Legislation website )

## 1.5 Mapping

The planning proposal does not include any mapping amendments.

## 1.6 Background

As indicated above, the planning proposal seeks to implement actions in Council's Local Strategic Planning Statement. In preparing the LSPS, Council engaged the community and undertook the Greater Sydney Commission's assurance process.

Council indicates that this Planning Proposal is the culmination of Council's commitment to deliver LSPS actions and to act upon ongoing discussions and correspondence between Council, the Minister for Planning and Public Spaces and the Department of Planning Industry and Environment.

To achieve the exemption, Council prepared this planning proposal in May 2021. As a separate matter, and following Council's meeting with the Minister, the Department wrote to Council in June 2021.

In its response, the Department acknowledged that Council was concerned about the impact of increased density and the larger footprint of development on the environmental values of the World Heritage Area. Further, the Department noted that Council had provided evidence that dual occupancy development, allowed under the Code in the R2 Low Density Residential Zone, allows for a substantial increase in non-pervious area on a lot allowing more stormwater runoff into the surrounding natural environment.

In response, an amendment to the Code is being progressed to limit the size of dual occupancy development in the R2 Zone in the Blue Mountains. Further, this amendment will vary the Code so that the floor space ration control for dual occupancies in the R2 Zone will mirror the controls in the *Blue Mountains LEP 2015* from 2 October 2021.

This amendment, however, is temporary and will be in force for two years, while a review of the Code is being undertaken.

## 2 Need for the planning proposal

*Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?*

As indicated, the planning proposal is essentially the culmination of Council's commitment to the delivery of LSPS actions 1.3 and 5.7, and ongoing discussions and correspondence between Council, the Minister for Planning and Public Spaces and DPIE.

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

Council has stated that the best means of achieving the intended outcomes of the planning proposal would be through an amendment to the Codes SEPP to exclude the Blue Mountains LGA from its application.

## 3 Strategic assessment

### 3.1 District Plan

The site is within the Western City District and the Greater Sydney Commission released the Western City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the relevant priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan, as outlined below.

In this regard, the Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

**Table 5 District Plan assessment**

District Plan Priorities	Justification
Planning Priority W12: Protecting and improving the health and enjoyment of the District's waterways	<p>The planning proposal is consistent with Planning Priority W12 as it seeks to maintain the strong local environmental and stormwater management controls that are currently applied to all medium density development under the Blue Mountains LEP 2015.</p> <p>The Low Rise Code allows more intense development with greater site coverage and less pervious area but does not provide substantial controls to manage increased stormwater runoff. In the absence of the Code's requirement for incorporating water sensitive urban design on site detention of stormwater or stormwater management systems to manage water quality, there is the potential for greatly compromised water quality. This potential for inferior water quality is not in accordance with priority W12, which seeks to protect and improve the health of the District's waterways.</p> <p>The proposal therefore seeks to maintain the existing fine-grained approach to stormwater management under the Blue Mountains LEP 2015, which is consistent with priority W12.</p>
Planning Priority W14: Protecting and enhancing bushland and biodiversity	<p>The planning proposal is consistent with Planning Priority W14 as it seeks ensure strong local planning provisions be applied to all medium density development within the LGA, to protect and enhance the significant environmental values of the surrounding World Heritage Area and the character values of the Blue Mountains' built environment.</p>

### 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as indicated in the following table:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Blue Mountains Local Strategic Planning Statement (LSPS)	<p>The planning proposal is consistent with Council's LSPS as it seeks to deliver LSPS Actions, as follows:</p> <ul style="list-style-type: none"> <li>Action 1.3 – Council will seek an exemption from the Low Rise Medium Density Housing Code in <i>State Environmental Planning Policy (Exempt and Complying Codes) 2008</i>, to ensure local stormwater management controls are maintained and continue to protect the receiving environment of the Blue Mountains World Heritage Area; and</li> <li>Action 5.7 – Council will seek an exemption from the Low Rise Medium Density Housing Code in <i>State Environmental Planning Policy (Exempt and Complying Codes) 2008</i>, to ensure local controls are maintained to protect the character of the Blue Mountains.</li> </ul> <p>The planning proposal is essentially the culmination of Council's commitment to deliver these two actions.</p>
Blue Mountains Local Housing Strategy (LHS) 2020	<p>The planning proposal is not inconsistent with Council's LHS. In particular, the strategy indicates that the 5-year housing target can be met or exceeded under current local planning controls. Consequently, application of controls under the Codes SEPP is not necessary.</p>
Blue Mountains Local Character Study 2020	<p>The planning proposal is generally consistent with the aims of the Blue Mountains Local Character Study 2020. The Local Character Study highlights the importance of character to the Blue Mountains, the typologies of the towns and villages and the threats to local character, including development that is compatible with unique local context.</p> <p>The proposal, in seeking exemption for the Blue Mountains LGA from the Low Rise Code, seeks to ensure that appropriate forms of residential development, compatible with the local character, are achieved through the existing planning controls under the Blue Mountains LEP 2015.</p>
Water Sensitive Blue Mountains Strategic Plan	<p>The planning proposal is consistent with the Water Sensitive Blue Mountains Strategic Plan. In particular, the Strategic Plan seeks to: "to set a coordinated approach to water management across council, protect the World Heritage values of our catchments, build resilience against climate change and enhance the liveability of our city".</p>

### 3.3 Local Planning Panel (LPP) recommendation

The Planning Proposal was reported to the Blue Mountains Local Planning Panel (LPP) on 19 April 2021. The LPP provided unanimous support for the proposal.

The LPP, in providing support for the proposal, also reiterated its concerns with the Low Rise Code as follows:

- The Code has the potential to undermine the continued listing of the Blue Mountains as a World Heritage area.
- Council's ability to manage the urban area of the Blue Mountains, and all three levels of government being able to establish that there was an appropriate planning framework in



place, is fundamental to the World Heritage listing of the Blue Mountains National Park. A key concern was the ability to manage the urban development area in the middle of the world heritage listed national park. This was central to the formulation of the LEP and DCP.

- c. The LPP is of a view that the Low Rise Code will not only result in outcomes that are inconsistent with the significant character of urban areas of the Blue Mountains, but also result in potential environmental impacts that could compromise the integrity of the World Heritage listing. Specifically, the Low Rise Code does not:
  - i. adequately respond to the unique environmental conditions of the local government area, particularly in relation to environmental impact or the management of stormwater on the fourteen threatened and endangered communities identified in the World Heritage listing. It does not provide the required level of controls on stormwater management from development sites nor the required controls on clearing;
  - ii. appropriately consider, respond or enable assessment of the bushfire risk within this local government area;
  - iii. provide guidelines which are appropriate to an urban area within a World Heritage listed landscape setting. It does not provide the required design standards that will ensure new residential development appropriately responds to the unique residential character and heritage of the area, including the landscape setting, and
  - iv. Built Form and Landscape development standards contained within the code will result in higher density residential forms which are out of character with the landscape settings of the villages of the Blue Mountains.

## 3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Residential Zones	Yes	The planning proposal is consistent with this Direction as it does not contain any provisions that will reduce the permissibility of housing opportunities or residential density on residential zoned land.
4.3 Flood Prone Land	Yes	The planning proposal is consistent with this Direction. While it concerns residential zoned land that may be flood prone land, there are no provisions within the proposal that impact upon existing development controls related to flood prone land.
4.4 Planning for Bushfire Protection	Yes	Should the proposal proceed to a favourable Gateway determination, it will be necessary for Council to consult with the NSW RFS in terms of the Direction.

5.2 Sydney Drinking Water Catchments		<p>The planning proposal is consistent with this Direction as the proposal seeks exemption from the Low Rise Code which contains less stringent controls compared to the fine-grained stormwater management controls currently required under the Blue Mountains LEP 2015.</p> <p>To ensure consistency with the Direction, however, should the proposal proceed to a favourable Gateway determination, it will be necessary for Council to consult with the Catchment Authority.</p> <p>.</p>
6.3 Site Specific Provisions	Yes	<p>As the proposal seeks to override less site specific Code planning controls and impose more stringent controls, it may be seen as technically inconsistent with the Direction. Consequently, should the proposal proceed to Gateway determinator, further consideration will need to be given to the consistency of the proposal with the Direction.</p>
7.1 Implementation of A Plan for Growing Sydney		<p>The planning proposal is consistent with this Direction as it seeks to address actions in the Region Plan and Western Sydney District Plan (as addressed in Section 3.1 of this report). These actions (W12 and W14) specifically relate to the protection of the natural environment including water quality, through effective stormwater management.</p>
7.8 Implementation of the Western Sydney Aerotropolis Plan	Yes	<p>This proposal only includes sites within the Blue Mountains LGA under the Blue Mountains LEP 2015. This land is not included in the Land Application Map under clause 5 of the SEPP (Western Sydney Aerotropolis).</p>

### 3.5 State environmental planning policies (SEPPs)

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Affordable Rental Housing SEPP 2009	Facilitate the increased supply and diversity of affordable rental and social housing in NSW.	Yes	The planning proposal does not reduce the opportunities for affordable housing provision under the SEPP. The outcome of the proposal seeks to maintain local provisions which presently facilitates affordable housing opportunities.
Koala Habitat Protection SEPP 2020	Encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent	Yes	The planning proposal does not seek to contradict or diminish the operation of the SEPP.

	free-living population over their present range and reverse the current trend of koala population decline.		
SEPP 55: Remediation of Land	Promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	Yes	The planning proposal does not seek to propose any changes to zoning or land use permissibility.
Sydney Drinking Water Catchment SEPP 2011	Provide for healthy water catchments that deliver high quality water.	Yes	The planning proposal seeks to respond to Blue Mountains LSPS Action 1.3:  “Council will seek an exemption from the Low-Rise Medium Density Housing Code in State Environmental Planning Policy (Exempt and Complying Codes) 2008, to ensure local stormwater management controls are maintained and continue to protect the receiving environment of the Blue Mountains World Heritage National Park.”  The application of Action 1.3 supports the intent of the SEPP.
Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2-1997)	Protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.	Yes	The planning proposal seeks to introduce relevant controls to support the intention of the SEPP.

## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Disturbances to critical habitat, threatened species, populations or ecological	It is unlikely that critical habitat, threatened species, populations or ecological communities or their habitats would be detrimentally impacted by this planning proposal.

communities or their habitats	The planning proposal seeks to ensure that strong local environmental provisions, such as the retention of landscaped and pervious areas, are not compromised and by the application of the Low Rise Code. The controls under the Low Rise Code ( <i>Clause 3B.59 Drainage</i> ) are less stringent than the controls within the Blue Mountains LEP 2015 ( <i>Clause 6.9 Stormwater management</i> ), allowing larger building footprints and far greater impervious areas, thereby significantly increasing stormwater runoff into the World Heritage National Park.
Water management and best practice	

## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Protection of tourism values	The planning proposal seeks to mitigate potential impacts of the Low Rise Code on the Blue Mountains LGA. This would provide certainty for the community and landowners that the unique local character and environmental values of the area will be preserved and maintained.  The protection and preservation of the unique local character and natural environment will contribute to the attraction of visitors and associated tourism, both of which are key to the economy of the Blue Mountains.
Preservation of local character and environmental values	

## 4.3 Infrastructure

The proposed outcomes of this planning proposal would not increase the need to augment existing infrastructure networks or increase the demand for additional public infrastructure.

# 5 Consultation

## 5.1 Community

At this time, consultation is not required. It is recommended that the proposal be returned for re-submission to allow Council's further consideration of the matter.

## 5.2 Agencies

Consultation is not required. It is recommended that the proposal be returned to allow Council's further consideration of the matter.

# 6 Timeframe

Should this be necessary following consultation with Council, a revised time table will be determined. .

## 7 Local plan-making authority

Council would not be able to be appointed as the local plan-making authority given the proposed amendment of a State Environmental Planning Policy.

## 8 Assessment summary

In view of the Department's letter to Council in June 2021, advising that an amendment to the Code is being progressed, it is considered that the proposal should be returned to afford Council the opportunity to reconsider the planning proposal in light of the Department's recent advice, and consider possible re-submission following further discussions with the Department.

## 9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal be resubmitted pending further discussions with the Department.



19/7/21

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