

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
Draft Amendment 13
(Amendment to Clause 1.9)



Exclusion from Code SEPP Low Rise Housing Diversity Code

**Prepared for Council endorsement
May 2021**

Prepared by Blue Mountains City Council

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PART 1 OBJECTIVES OR INTENDED OUTCOMES

Overview

The objective of this Planning Proposal is to exclude the Blue Mountains LGA from the application of the Low Rise Housing Diversity Code (Low Rise Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The potential impacts of the Low Rise Code on the particular characteristics of the Blue Mountains Local Government Area were considered as part of extensive strategic planning work to develop *Blue Mountains 2040: Living Sustainably*, Council's Local Strategic Planning Statement. This resulted in the following two actions to seek an exemption from the Low Rise Housing Diversity Code being included in Council's Local Strategic Planning Statement (LSPS)

- *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*

These actions were endorsed in conjunction with LSPS, through the Greater Sydney Commission assurance process. Blue Mountains received its letter of support on 18 March 2020, and the LSPS was made on 31 March 2020.

This Planning Proposal is the result of a long running effort to deliver on these LSPS actions through ongoing discussions and correspondence between Council, the Minister for Planning and Public Spaces and the Department of Planning Industry and Environment.

Following a meeting with the Minister for Planning and Public Spaces in July 2020, it was understood that the Department would investigate mechanisms to facilitate an exemption from the Low Rise Housing Diversity Code for the Blue Mountains LGA. This has not occurred despite a similar amendment being made to the Seniors SEPP to remove the applicability of Metropolitan Rural Areas. As a result this planning proposal seeks to progress an exemption from the Low Rise Housing Diversity Code through an amendment to the local planning framework.

Note: For background, previous correspondence is attached to this Planning Proposal. Please see Part 7 Attachments.

Reason for Planning Proposal

As outlined above, this planning proposal seeks to ensure that strong local planning provisions can be applied to all medium density development in the LGA to protect the significant environmental values of the surrounding World Heritage Area, and character values of the City's built environment. Currently, the application of the Low Rise Code allows complying development to occur for substantial development types (including medium density development), while meeting weaker development standards. The shortcomings and potential impacts resulting from the Low Rise Code are outlined below.

Impact on stormwater management

Situated on ridgelines, the urban areas of the Blue Mountains drain into the surrounding World Heritage Area and ultimately into Sydney's drinking water catchment. Best practice, local stormwater controls in Blue Mountains LEP 2015 reflect this unique location and work to manage both the quality and quantity of stormwater leaving a site. These current controls have been in place for 15 years (first implemented under Blue Mountains LEP 2005). Following is the current local provision for stormwater management.

6.9 Stormwater management

- (1) *The objective of this clause is to avoid the adverse impacts of urban stormwater on land on which development is located and on adjoining properties, native bushland and receiving waters.*
- (2) *Development consent must not be granted for development unless the consent authority is satisfied that the development—*
 - (a) incorporates best practice water sensitive urban design principles, and*
 - (b) is designed to maximise the use of water permeable surfaces on the land having regard to groundwater levels and the soil characteristics affecting on-site infiltration of water, and*
 - (c) includes, if practicable, on-site stormwater retention for reuse as an alternative supply to mains water, groundwater or river water, and*
 - (d) avoids any adverse impacts caused by stormwater runoff on adjoining properties, native bushland and the receiving natural environment by ensuring that—*
 - (i) the quality of surface water or groundwater leaving the site is not reduced in the short or long term, and*
 - (ii) the quantity and flow characteristics of stormwater leaving the site is not adversely altered, and*
 - (iii) stormwater treatment and disposal methods achieve adequate filtration, absorption, dissipation and scour protection, and*
 - (e) integrates stormwater management measures into the landscape so as to provide a neutral or beneficial effect on environmental and water quality protection, stormwater retention and detention, flood mitigation, landscaping, public open spaces and recreational and visual amenity.*

This fine-grained approach to stormwater management is in stark contrast to the minimal consideration provided under the Code, which only requires that development is connected to a drainage system:

3B.59 Drainage

All stormwater collecting as a result of development erected, altered or added to under this code must be directed by a gravity fed or charged system to—

- (a) a public drainage system, or*
- (b) an inter-allotment drainage system, or*
- (c) an on-site disposal system.*

Note 1. *Drainage has the same meaning as it has in the Standard Instrument.*

Note 2. *All stormwater drainage systems and connections to public drainage systems of inter-allotment drainage systems must either be approved under section 68 of the [Local Government Act 1993](#) or comply with the requirements for the disposal of stormwater contained in the development control plan that is applicable to the land.*

Clause 3B.59 in the Code (above) only refers to complying with DCP controls or obtaining a Section 68 approval as a 'note' not a provision, thereby not given the same weight as is given to clause based requirements. Notwithstanding, it is not considered appropriate that areas with this level of technical complexity have no oversight beyond certification, particularly in an environmentally sensitive area like the Blue Mountains.

The note also refers to a Section 68 approval as a potential pathway. Section 68 is not intended to be a pathway for planning approval. As shown in the extract of Section 68 below, it is intended to approve connection to a public drain, not the assessment or approval of stormwater management associated with a development.

68 What activities, generally, require the approval of the council?

- (1) *A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.*

.....

Table

Approvals

Part B Water supply, sewerage and stormwater drainage work

1 Carry out water supply work

2 Draw water from a council water supply or a standpipe or sell water so drawn

3 Install, alter, disconnect or remove a meter connected to a service pipe

4 Carry out sewerage work

5 Carry out stormwater drainage work

6 Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

Not only does the Code allow more intense development, with greater site coverage and less pervious area, but it does not provide any meaningful controls to manage this increased stormwater runoff. Without any 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 highly compromised water quality outcomes as a result of the Code.

At a strategic level, this is in conflict with the requirements of the Western City District Plan, including planning priorities W12 and W14, which directly reference the protection and enhancement of bushland and biodiversity through such things as reducing edge effect impacts from stormwater runoff.

Impact on Residential Character

In addition to the likely adverse environmental impacts to result from the Code as outlined above, the state policy will also erode defining built character elements of the towns and villages of the Blue Mountains. This is at odds with the local Character and Place Guideline released by the State Government in February 2019. While the Low Rise Housing Diversity Design Guide is acknowledged, it is not an adequate mechanism to ensure retention of residential character.

Residential character areas and their landscape settings are central to tourism and are a defining characteristic of the Blue Mountains LGA. The Blue Mountains Local Character Study 2020 and Local Character Statement 2020 explore the relationship between lot size, site coverage, and the landscape character of the Blue Mountains in detail. It is not just a case of design elements or architectural style, but the fundamental impact that the size and scale of buildings, and the opportunity for substantial landscaping, has on the overall character of an area. The Local Strategic Planning Statement captures the risk that the Code poses to the character of the Blue Mountains, and outlines that it is important that the LGA is exempt from this code to protect the City's character as well as protect the surrounding natural environment.

It is recognised that the Department of Planning, Industry and Environment recently exhibited Explanation of Intended Effect (EIE) for character overlay provisions in LEPs, includes a potential pathway for seeking an exemption for particular areas, based on character considerations. However, the potential for a small number of areas to be exempt from the Code does not and cannot address the key planning matters raised in the above section. As such and to ensure the ongoing preservation of local character and environmental values, an exemption for the entire Blue Mountains LGA from the Low Rise Housing Diversity Code is considered the only appropriate planning outcome.

Impact on local housing diversity

The ongoing application of the Low Rise Code in the Blue Mountains is not appropriate at the local level for the environmental and built character considerations outlined herein. The Council has explored other options (including the application of a minimum lot size for multi-unit and dual occupancy development). These will have a detrimental effect on housing diversity opportunities as a result of measures that will be necessary to minimise the adverse impacts of the Code as summarised below.

The Code will allow significantly larger development to occur on smaller lots than would be permissible under local planning controls in the Blue Mountains. If no exemption from the Code is granted, amendments to Council's LEP will need to be made to minimise the impact of the Code.

Blue Mountains LEP 2015 currently includes provisions (Clause 4.1B and separate controls for attached and detached dual occupancy) which utilise minimum lot size to provide cascading opportunities for dual occupancy based on the size of land, with current minimum lot sizes under this provision varying from 720m² to 1100m². Given minimum lot size is the mechanism by which the Code applies, the Blue Mountains LEP will need to be amended to remove these clauses and include a single minimum lot size for this type of development. This will result in a significant loss of housing diversity options at the local level, directly in contrast to the stated aims of the Code.

By way of example, were the Council to prepare an amending LEP to install a minimum lot size of 1100m² for all types of dual occupancies, this would reduce the opportunity for dual occupancies to just 11% of R2 zoned land. The opportunity for housing diversity is currently available to 50% of all R2 zoned lots (through provisions which require smaller dwellings on smaller lots as referenced above).

Switching off these controls would result in both a loss of housing diversity, loss of housing affordability and the potential loss of housing supply. Both of these outcomes are at odds with the common goals of Council and the Department and as noted, do not align with the aims informing the Code. Such an amendment would significantly frustrate the ability to deliver hidden density through this development type, which is a key deliverable for an area like the Blue Mountains.

Therefore, while Council has reviewed at the suggestion of the Department of Planning, Industry & Environment staff, a planning proposal to amend the minimum lot size provisions for dual occupancy development and medium density housing, this is not considered an appropriate planning outcome for the Blue Mountains. This one size fits all approach will reduce housing diversity, through the removal of existing, locally appropriate opportunities which continue to work well to provide diverse housing choice for the community.

PART 2 EXPLANATION OF PROVISIONS

The objective of this planning proposal is to exclude the Blue Mountains LGA from the application of the Low Rise Housing Diversity Code (Low Rise Code) in State Environmental Planning Policy (exempt and Complying Development Codes) 2008.

This planning proposal seeks to achieve this by excluding the application of the Low Rise Code to all land to which Blue Mountains LEP 2015 applies. This is proposed to be achieved by amending clause 1.9 Application of SEPPs to list the Low Rise Code in subclause (2), shown in red below.

1.9 Application of SEPPs

- (1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 3.28 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies—

State Environmental Planning Policy No 1—Development Standards

*State Environmental Planning Policy (exempt and Complying Development Codes) 2008 -
Part 3B Low Rise Housing Diversity Code*

PART 3 JUSTIFICATION

Section A - A Need for the Planning Proposal

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

Yes, this planning proposal seeks to implement actions in Blue Mountains 2040: Living Sustainably, Council's Local Strategic Planning Statement. The LSPS was the result of rigorous community engagement and the Greater Sydney Commission's assurance process. Importantly, the actions which this Planning Proposal seeks to deliver on significant community and State agency support received as part of this consultation and assurance process.

The actions from the LSPS which speak to the importance of the Blue Mountains being exempt from the application of the Low Rise Code are:

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

This Planning Proposal is the culmination of the Council's commitment to deliver on these LSPS actions, and ongoing discussions and correspondence between Council, the Minister for Planning and Public Spaces and the Department of Planning Industry and Environment..

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

The best means to achieve the intended outcome would be through an amendment to the Codes SEPP to exclude the Blue Mountains LGA from its application. Similarly, the intended outcome of this planning proposal could be achieved through an amendment to the Codes SEPP to exclude the Metropolitan Rural Area (MRA) similar to the recent amendment made to the Seniors SEPP.

The environmental values of the Blue Mountains were recognised in the Western Sydney District Plan which classified the entire LGA as MRA. The importance of the MRA was made clear by the Department in the recent amendment to the Seniors SEPP which excluded MRA from the application of this SEPP. Similarly, it would be appropriate to exclude the MRA from the application of the Low Rise Housing Diversity Code. The Department has endorsed maps identifying this land classification (as part of the recent amendment to application of the Seniors Housing SEPP). These mapped areas could reasonably be utilised as a mechanism to exclude the MRA in the Blue Mountains from the Code.

However, in the absence of any amendment to the Codes SEPP by the Department in response to representations and correspondence from Council (and as outlined above), the most appropriate and the only alternative to achieve the intended outcome of excluding the Blue Mountains LGA from the application of the Low Rise Code, is through this Planning Proposal.

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 is consistent with the Greater Sydney Region Plan (2018) and the Western City District Plan (2018). This planning proposal supports the requirements of the District Plan, including planning priorities W12 and W14, which directly reference the protection and enhancement of bushland and biodiversity through such things as reducing edge effect impacts from stormwater runoff. The planning proposal seeks to achieve this by ensuring that strong local environmental and stormwater management controls are applied to all medium density development. This is proposed to be achieved by excluding the Blue Mountains LGA from the application of the Low Rise Housing Diversity Code due to the lack of stormwater management controls in the Code.

The key District Plan priorities this planning proposal seeks to support are:

- W12 Protecting and improving the health and enjoyment of the District's waterways
 - Regional Plan objective 25: The coast and waterways are protected and healthier
 - District Plan action 67: Protect environmentally sensitive areas of waterways
- W14 Protecting and enhancing bushland and biodiversity
 - Regional Plan objective 27 Biodiversity is protected. Urban bushland and remnant vegetation is enhanced
 - District Plan action 72 Protect biodiversity by: (c) managing urban development and urban bushland to reduce edge effect impacts

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

As outlined above, this planning proposal is consistent with the Sustainable Blue Mountains 2025 and Blue Mountains 2040 (Local Strategic Planning Statement) and supporting strategies and studies. This included substantial work on local housing needs and housing diversity, through the preparation of a Local Housing Strategy, as summarised below:

- The Local Strategic Planning Statement and Local Housing Strategy was adopted by Council on 31 March 2020. This followed:
 - A detailed assurance process with the Greater Sydney Commission, attended by the Department of Planning, Industry and Environment
 - Inclusion of actions in the Local Strategic Planning Statement to seek an exemption from the Low Rise Code
 - Widespread community support for this approach, as well as support from Water NSW for the Blue Mountains to be exempt from the Code
- The Local Housing Strategy adopted by Council on 31 March 2020, investigates in detail the current and future housing needs of the local community. In particular, it:
 - Includes a survey of housing preference within the local community.
 - Proposes a range of strategies to improve housing diversity within the City to meet these needs.
 - Demonstrates that the 5-year housing target can be met or exceeded under current local planning controls
 - Nominates a 6-10-year housing target, which aligns with the housing target range provided by the Greater Sydney Commission (GSC) in their letter of support received at the finalisation of the LSPS Assurance process
 - Aligns with and responds to the classification of the Blue Mountains as a Metropolitan Rural Area (MRA) in the Western City District Plan. This classification means that the Blue Mountains is not expected to accommodate growth from Sydney.
- The Blue Mountains Local Character Study and Statement, adopted by Council on 31 March 2020, provide an overview of:
 - The importance of character to the identity of the Blue Mountains, including its contribution to the City's attraction for visitors
 - The different typologies of the Blue Mountains towns and villages
 - The character of each town and village including defining elements
 - Threats to local character, including unsympathetic development which does not respond to local context
- The Water Sensitive Blue Mountains Strategic Plan, adopted by Council in September 2019, to develop an integrated water management approach based on best practice stormwater management principles.

Local housing diversity strategies are captured as actions in the Local Strategic Planning Statement and Local Housing Strategy, and will result in future LEP amendments. These amendments would maintain the ability to provide housing diversity in areas suitable for increased densities, while also mitigating environmental impacts (including stormwater management and urban runoff), and appropriately considering residential character.

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 13 with all State Environmental Planning Policies (SEPPs) and relevant Sydney Regional Environmental Plans (SREPs).

Note:

- ¹ **Not Relevant:** This SEPP or SREP does not apply to land within LEP 2015 Draft Amendment 11
- ² **Consistent:** This SEPP or SREP applies; LEP 2015 Draft Amendment 11 meets the relevant requirements and is in accordance with the SEPP or SREP.
- ³ **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

<u>State Environmental Planning Policies in force</u>		NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
SEPP	Aboriginal Lands 2019	✓		
SEPP	Activation Precincts 2020	✓		
SEPP	Affordable Rental Housing 2009		✓	
SEPP	Building Sustainability Index: BASIX 2004	✓		
SEPP	Coastal Management 2018	✓		
SEPP	Concurrences and Consents 2018	✓		
SEPP	Educational Establishments and Child Care Facilities 2017	✓		
SEPP	Exempt and Complying Development Codes 2008	✓		
SEPP	Gosford City Centre 2018	✓		
SEPP	Housing for Seniors or People with a Disability 2004	✓		
SEPP	Infrastructure 2007	✓		
SEPP	Koala Habitat Protection 2020		✓	
SEPP	Kosciuszko National Park-Alpine Resorts 2007	✓		
SEPP	Kurnell Peninsula 1989	✓		
SEPP	Major Infrastructure Corridors 2020	✓		
SEPP	Mining, petroleum Production and Extractive Industries 2007	✓		
SEPP 19	Bushland in Urban Areas	✓		
SEPP 21	Caravan Parks	✓		
SEPP 33	Hazardous and Offensive Development	✓		
SEPP 36	Manufactured Home Estates	✓		
SEPP 47	Moore Park Showground	✓		
SEPP 50	Canal Estate Development	✓		
SEPP 55	Remediation of Land		✓	
SEPP 64	Advertising and Signage	✓		
SEPP 65	Design Quality of Residential Apartment Development	✓		
SEPP70	Affordable Housing (Revised Schemes)	✓		
SEPP	Penrith Lakes Scheme 1989	✓		
SEPP	Primary Production and Rural Development 2019	✓		
SEPP	State and Regional Development 2011	✓		
SEPP	State Significant Precincts 2005	✓		
SEPP	Sydney Drinking Water Catchment 2011		✓	
SEPP	Sydney Region Growth Centres 2006	✓		
SEPP	Three Ports 2013	✓		
SEPP	Urban Renewal 2010	✓		
SEPP	Vegetation in Non-Rural Areas 2017	✓		
SEPP	Western Sydney Aerotropolis		✓	
SEPP	Western Sydney Employment Area 2009	✓		
SEPP	Western Sydney Parklands 2009	✓		

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

SEPP (Affordable Rental Housing) 2009

- This planning proposal is consistent with the Affordable Rental Housing SEPP. This planning proposal does not diminish opportunities for affordable housing under the SEPP. Further, this proposal seeks to maintain existing local provisions which facilitate affordable housing opportunities. If the Low Rise Housing Diversity Code continues to apply to the LGA, these provisions will need to be removed to limit the impacts from the Code as outlined in this planning proposal.

SEPP (Koala Habitat Protection) 2020

- This planning proposal is consistent with the Koala Habitat Protection 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*.

SEPP 55 (Remediation of Land)

- This planning proposal is consistent with the Remediation of Land SEPP. This planning proposal does not propose any changes to the zoning or permissibility of land uses.

SEPP (Sydney Drinking Water Catchment) 2011

- This planning proposal is consistent with the Drinking Water Catchment SEPP. A key element of LEP 2015 is the recognition of the importance of managing stormwater in the urban areas of the City. The objective of this planning proposal is to ensure these controls apply to all medium density development in the local area and are not overridden or diminished by other State Planning Policy.

SEPP (Western Sydney Aerotropolis) 2020

- This planning proposal does not include any land within the Land Application Map.

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

- This planning proposal is consistent with the SREP 20. A key element of LEP 2015 is the recognition and protection of the Blue Mountains National Park and environment which surround the urban areas of the City, including strong stormwater controls. The objective of this planning proposal is to ensure these controls apply to all medium density development in the local area and are not overridden or diminished by other State Planning Policy.

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:

- ¹ **Not Relevant:** This direction does not apply to land within LEP 2015 Draft Amendment 11
- ² **Consistent:** This direction applies; LEP 2015 Draft Amendment 11 meets the relevant requirements and is in accordance with the direction.
- ³ **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.

Directions by the Minister (previous s 117(2))		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
1. EMPLOYMENT AND RESOURCES				
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	✓		
2. ENVIRONMENT AND HERITAGE				
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	✓		
2.6	Remediation of Contaminated Land	✓		
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT				
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 Regulated Airports and Defence Airfields	✓		
3.6	Shooting Ranges	✓		
3.7	Reduction in non-hosted short term rental accommodation period	✓		
4. HAZARD AND RISK				
4.1	Acid Sulfate Soils	✓		
4.2	Mine Subsidence and Unstable Land		✓	
4.3	Flood Prone Land		✓	
4.4	Planning for Bushfire Protection		✓	
5. REGIONAL PLANNING				
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	✓		
5.9	North West Rail Link Corridor Strategy	✓		
5.10	Implementation of Regional Plans	✓		
5.11	Development of Aboriginal Land Council land	✓		
6. LOCAL PLAN MAKING				
6.1	Approval and Referral Requirements	✓		
6.2	Reserving Land for Public Purposes	✓		
6.3	Site Specific Provisions		✓	
7. METROPOLITAN PLANNING				
7.1	Implementation of A Plan for Growing Sydney		✓	

<u>Directions by the Minister (previous s 117(2))</u>		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
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	✓		
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	✓		
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	✓		
7.9	Implementation of Bayside West Precincts 2036 Plan	✓		
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	✓		
7.11	Implementation of St Leonards and Crows Nest 2036 Plan	✓		
7.12	Implementation of Greater Macarthur 2040	✓		
7.13	Implementation of Pyrmont Peninsula Place Strategy	✓		

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

3.1 Residential Zones Objectives

Objectives

(1) *The objectives of this direction are:*

- (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
- (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) *to minimise the impact of residential development on the environment and resource lands. 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 affect land within:*

- (a) *an existing or proposed residential zone (including the alteration of any existing residential zone boundary),*
- (b) *any other zone in which significant residential development is permitted or proposed to be permitted.*

What a relevant planning authority must do if this direction applies

(4) *A planning proposal must include provisions that encourage the provision of housing that will:*

- (a) *broaden the choice of building types and locations available in the housing market, and*
- (b) *make more efficient use of existing infrastructure and services, and*
- (c) *reduce the consumption of land for housing and associated urban development on the urban fringe, and*
- (d) *be of good design.*

(5) *A planning proposal must, in relation to land to which this direction applies:*

- (a) *contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
- (b) *not contain provisions which will reduce the permissible residential density of land.*

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 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, Regional Plan 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 proposal concerns land in zone R2 Low Density Residential and R3 Medium Density Residential.

This planning proposal is consistent with Direction 3.1 Residential zone objectives. Nothing in this proposal reduces permissibility of housing opportunities on residential zoned land. This proposal also seeks to maintain existing provisions which provide opportunities for more affordable housing opportunity. As outlined in this planning proposal, the ongoing application of the Low Rise Housing Diversity Code in the Blue Mountains will mean that these provisions will need to be removed to minimise the impacts of the Code. An exemption from the Code would however allow these provisions to remain.

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 planning proposal is consistent with Direction 4.3 Flood prone land. This proposal concerns land within residential zones which may be flood prone land. Nothing in this proposal affects existing development controls related to flood prone land.

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 amendment acknowledges the significant bushfire risk present in the Blue Mountains. 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 prescribed by the Gateway Determination.

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

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 planning proposal is consistent with Direction 5.2 Sydney Drinking Water Catchment. A key driver for this amendment is the management of stormwater quantity and quality, particularly due to the significant proportion of urban land within the Blue Mountains within the Sydney Drinking Water Catchment. LEP 2015 recognises the importance of the protection of the Blue Mountains National Park and environment which surround the urban areas of the City, including the Sydney drinking water catchment. This planning proposal seeks to ensure that these provisions will continue to apply to all medium density development, and are not diminished by State Planning Policy.

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

No changes are proposed to site specific provision. This planning proposal is consistent with Direction 6.3 Site specific provisions.

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 deliver on actions in the Regional Plan and the Western Sydney District Plan related the protection of the natural environment including water quality, through effective stormwater management. As detailed earlier, this proposal is consistent with the Greater Sydney Region Plan (2018) and the Western City District Plan (2018).

7.8 Implementation of the Western Sydney Aerotropolis Plan

Objective

(1) *The objective of this direction is to ensure development within the Western Sydney Aerotropolis is consistent with the Western Sydney Aerotropolis Plan dated September 2020.*

Where this direction applies

(2) *This direction applies to Blacktown City Council, Blue Mountains City Council, Camden Council, Campbelltown City Council, Fairfield City Council, Liverpool City Council, Penrith City Council and Wollondilly Shire Council.*

When this direction applies

(3) *This direction applies when a relevant planning authority prepares a planning proposal for land the subject of the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (SEPP). This includes any land to which clause 5 of the SEPP applies.*

What a Relevant Planning Authority must do if this direction applies

(4) *A planning proposal is to be consistent with the Western Sydney Aerotropolis Plan approved by the Minister for Planning and as published on 10 September 2020 on the website of the Department of Planning, Industry and Environment.*

Consistency

(5) *A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning, Industry & Environment (or an officer of the Department nominated by the Secretary), that:*

- (a) the provisions of the planning proposal that are inconsistent are of minor significance, and*
- (b) the planning proposal achieves the overall intent of the Western Sydney Aerotropolis Plan and does not undermine the achievement of its objectives, planning principles and priorities for the Western Sydney Aerotropolis.*

Response

There are no sites included in this amendment which are on the Land Application Map noted in clause 5 of the SEPP (Western Sydney Aerotropolis).

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. LEP 2015 contains strong controls for the protection of the environment, and nothing in this draft amendment seeks to contradict or diminish these provisions. Importantly, this planning proposal seeks to ensure that strong local environmental provisions, including the retention of landscaped and pervious areas are not compromised by the application of the Low Rise Housing Diversity Code.

- 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 strong controls for the protection of the environment. Importantly, this planning proposal seeks to ensure that strong local environmental provisions are able to be applied to all relevant development, rather than set aside under complying development provisions at the state level.

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

This planning proposal seeks to mitigate potential impacts of the Low Rise Housing Diversity Code on the local area. This would improve certainty for the community and land owners that the character and environmental values of the area will be maintained. It has long been recognised that there is a link between the design and amenity of an area in which people live and their sense of well-being. For the Blue Mountains, the character of the City and environmental values of the surrounding natural environment contribute significantly to its attraction to visitors, which is a key element in the City's economy. This planning proposal seeks to ensure that both the local economy and well-being of the community is not adversely impacted by the imposition of State planning policy.

Importantly, the ongoing application of the Low Rise Housing Diversity Code in the Blue Mountains will require the restricting the provision of housing diversity due to changes that would need to be made to minimum lot size provisions to mitigate the impacts of the Code. This planning proposal seeks to ensure existing provisions which provide for a sliding scale of 'hidden density' based on different lot size can be maintained.

Section D - State and Commonwealth Interests

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

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 there would be anything contained in the proposed amendment that would be a significant concern to State or Commonwealth authorities.

It is important to note that a submission was made by Water NSW during the public exhibition of the Draft LSPS which supported Council's LSPS, including acknowledging actions to seek an exemption from the Low Rise Housing Diversity Code, and suggesting additional strengthening of actions to manage stormwater quality and quantity.

PART 4 MAPPING

There are no mapping changes proposed as part of this clause based amendment.

PART 5 COMMUNITY CONSULTATION

Council will undertake agency and community consultation as prescribed in the Gateway Determination and in accordance with the community consultation requirements noted in *A guide to preparing local environmental plans*.

PART 6 PROJECT TIMELINE

A nominal time period for the preparation, exhibition, and making of the amendment is:

Planning Proposal reported to the Local Planning Panel for comment	April 2021
Planning Proposal reported to the Council	May 2021
Submission of planning proposal to DPIE for 'gateway review'	June 2021
Gateway determination issued	July 2021
RFS consultation required by Ministerial Direction 4.4	July-Aug 2021
Public exhibition	Aug-Sept 2021
Council review of submissions	October 2021
<ul style="list-style-type: none">Report prepared for the Council to consider the result of the community consultation and resolve to make amendment.Drafting request to be sent to PCOFinal PCO opinion receivedRequest to notify plan submitted to DPIE	November 2021
Draft Amendment to LEP 2015 to be made	December 2021

* Public exhibition will be undertaken in accordance with Department and Council guidelines and will avoid a national holiday period or be extended as appropriate.

PART 7 Attachments

	Attachment	BMCC ref.
1	BMCC letter to DPIE to provide background information on low rise code exemption request	20/142126
2	BMCC letter to minister for Planning and Public Spaces (briefing note) for meeting July 2020	20/166379
3	BMCC Submission on local character overlay EIE	21/8888
4	Letter to Minister for Planning and Public Spaces February 2021	20/203657 (21/28739)
5	Follow up letter to Minister for Planning and Public Spaces March 2021	21/60995
6	Water NSW submission on BMCC LSPS	19/264162
7	GSC assurance letter for BMCC LSPS	20/57228



29 July 2020

Office of the Chief Executive Officer

F00678: 20/142126

Meagan Kanaley
Director Codes and Design
Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms Kanaley

SUBJECT Exemption from the Low Rise Housing Diversity Code

The Council writes to again formally request an exemption from the Low Rise Housing Diversity Code (the Code). This request follows that most recently sent on 30 April 2020 and a meeting held between key Council and Department staff on the 18 June 2020, where further detail of Council's case for an exemption was sought.

Since that time, the Council resolved to write a further letter, which has been sent, to the Minister for Planning and Public Spaces, the Hon. Robert Stokes, seeking a meeting to discuss the potential impacts on the World Heritage area, which remain a serious and important issue for Council and the local community. Council is pleased that this meeting with the Minister will be held on 30 July 2020.

Detailed in this letter are Council's grounds for an exemption from the Code. This expands on the issues that have been raised in previous requests in February and December 2016, June 2018 and 30 April 2020. Also provided is a more detailed analysis of the controls in the Code, including how the introduction of a one-size-fits-all planning policy would actually reduce housing diversity at a local level.

1. Development Controls

Blue Mountains City Council allows dual occupancy development in the R2 Low Density Residential zone and medium density development in the R3 Medium Density Residential zone.

Urban area management was central to obtaining the World Heritage listing with a receiving environment of the surrounding World Heritage National Park and Sydney's drinking water supply. To override these long held local provisions within the sensitive and constrained Blue Mountains LGA is an unacceptable outcome within a World Heritage National Park.

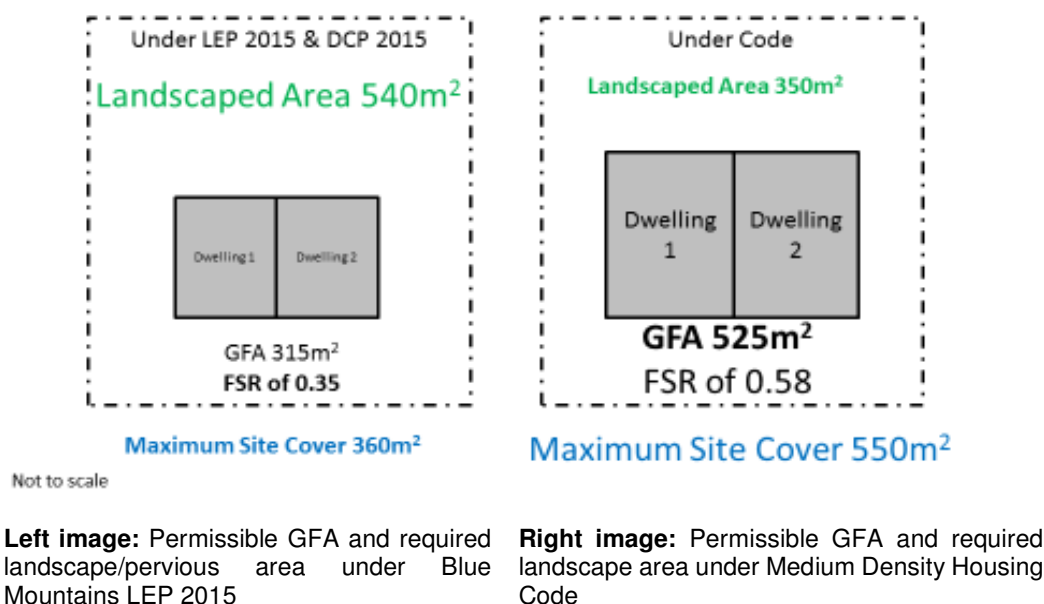
In addition to the unacceptable environmental impact likely to result from the Code, the built outcome allowable under these complying development provisions will adversely impact the character of the Blue Mountains. Both of these issues are addressed in detail below.

Council's core ongoing issue with the introduction of the Code is that it poses an unacceptable risk to the environmental values of the World Heritage area, as it allows for a substantial intensification of residential development. This environmental impact centres around two key points:

- Allowance under the Code for a substantially greater building footprint and therefore significant increases in stormwater runoff; and
- No adequate controls to manage this increased runoff under the Code

A comparative example is provided below:

- Example of 900m² lot and dual occupancy side by side in R2



a) Stormwater management

Situated on ridgelines, the urban areas of the Blue Mountains drain into the surrounding World Heritage Area and ultimately into Sydney's drinking water catchment. The best practice, local stormwater controls in Blue Mountains LEP 2015 reflect this unique location and work to manage both the quality and quantity of stormwater leaving a site. These current controls have been in place for 15 years (first implemented under Blue Mountains LEP 2005). Following is the current local provision for stormwater management.

6.9 Stormwater management

- (1) The objective of this clause is to avoid the adverse impacts of urban stormwater on land on which development is located and on adjoining properties, native bushland and receiving waters.
- (2) Development consent must not be granted for development unless the consent authority is satisfied that the development—
 - (a) incorporates best practice water sensitive urban design principles, and
 - (b) is designed to maximise the use of water permeable surfaces on the land having regard to groundwater levels and the soil characteristics affecting on-site infiltration of water, and
 - (c) includes, if practicable, on-site stormwater retention for reuse as an alternative supply to mains water, groundwater or river water, and

- (d) avoids any adverse impacts caused by stormwater runoff on adjoining properties, native bushland and the receiving natural environment by ensuring that—
 - (i) the quality of surface water or groundwater leaving the site is not reduced in the short or long term, and
 - (ii) the quantity and flow characteristics of stormwater leaving the site is not adversely altered, and
 - (iii) stormwater treatment and disposal methods achieve adequate filtration, absorption, dissipation and scour protection, and
- (e) integrates stormwater management measures into the landscape so as to provide a neutral or beneficial effect on environmental and water quality protection, stormwater retention and detention, flood mitigation, landscaping, public open spaces and recreational and visual amenity.

This fine-grained approach to stormwater management is in stark contrast to the minimal consideration provided under the Code, which only requires that development is connected to a drainage system:

3B.59 Drainage

All stormwater collecting as a result of development erected, altered or added to under this code must be directed by a gravity fed or charged system to—

- (a) a public drainage system, or
- (b) an inter-allotment drainage system, or
- (c) an on-site disposal system.

Note 1. *Drainage has the same meaning as it has in the Standard Instrument.*

Note 2. *All stormwater drainage systems and connections to public drainage systems of inter-allotment drainage systems must either be approved under section 68 of the [Local Government Act 1993](#) or comply with the requirements for the disposal of stormwater contained in the development control plan that is applicable to the land.*

Clause 3B.59 in the Code (above) refers to complying with DCP controls or obtaining a S.68 approval. Given this is only a 'note' not a provision, it is understood that many certifiers do not give the same weight as may be given to clause based requirements. Notwithstanding, it is not considered appropriate that areas with this level of technical complexity have no oversight beyond certification, particularly in an environmentally sensitive area like the Blue Mountains.

The note also refers to a Section 68 approval as a potential pathway. Section 68 is not intended to be a pathway for planning approval. As shown in the extract of Section 68 below, it is intended to approve connection to a public drain, not the assessment or approval of stormwater management associated with a development.

68 What activities, generally, require the approval of the council?

- (1) *A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.*

.....

Table

Approvals

Part B Water supply, sewerage and stormwater drainage work

- 1** *Carry out water supply work*
- 2** *Draw water from a council water supply or a standpipe or sell water so drawn*
- 3** *Install, alter, disconnect or remove a meter connected to a service pipe*
- 4** *Carry out sewerage work*
- 5** *Carry out stormwater drainage work*

6 Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

Not only does the Code allow more intense development, with greater site coverage and less pervious area, but it does not provide any meaningful controls to manage this increased stormwater runoff. Without any 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 highly compromised water quality outcomes as a result of the Code.

At a strategic level, this is in conflict with the requirements of the Western City District Plan, including planning priorities W14 and W15, which directly reference the protection and enhancement of bushland and biodiversity through such things as reducing edge effect impacts from stormwater runoff.

b) Residential Character

In addition to the environmental impacts these controls would have, the Code will also erode defining built character elements of our towns and villages. This is at odds with the local Character and Place Guideline released by the State Government in February 2019. While the Low Rise Housing Diversity Design Guide is acknowledged, it is not an adequate mechanism to ensure retention of residential character.

Residential character areas and their landscape settings are central to the City's tourism and a defining characteristic of the Blue Mountains LGA. The Blue Mountains Local Character Study 2020 and Local Character Statement 2020 explore the relationship between lot size, site coverage, and the landscape character of the Blue Mountains in detail. The Local Strategic Planning Statement also captures the risk that the Code poses to the character of the Blue Mountains, and outlines that it is important that the LGA is exempt from the code to protect the City's character as well as protect the surrounding natural environment.

2. Extent of application of the Code

At the meeting of 18 June 2020 attended by key staff from Council and DPIE, it was requested that Council provided additional data/information in relation to areas of the City to which the Code would apply.

Council provided an email response on 30 June 2020. This included the overall number of lots to which the Code would apply and the percentage of those lots which are bush fire prone. This information has been incorporated here for ease of reference. Following this, an additional request was received from DPIE on 13 July 2020 for the following:

- The number of bush fire prone lots within the R1, R2 and R3 zones are categorised as either BAL 40 or BAL Flame Zone in the Blue Mountains LGA
- The number of R2 zoned lots above 900sqm (attached dual occupancies) and 1100sqm (detached dual occupancies).
- Information on lots with a width greater than 15m.

The following section responds to these requests. Importantly, the analysis is based on the best available data from Council's property and mapping as agreed at the meeting of 18 June 2020.

Bush fire Prone Land:

A core public safety concern in relation to application of the Code in the Blue Mountains is the extreme bush fire prone nature of the local government area.

The request from DPIE on 13 July 2020 to provide data on those lots categorised as BAL 40 or BAL-FLZ is problematic.

Given the complexity of determining a BAL and the required assessment of multiple factors, including vegetation, distance of vegetation from a structure and the slope of the land, it is not possible to provide this data.

The majority of these environmental factors are required to be considered in a significant proportion of all development applications in the Blue Mountains. As a result of this complex range of considerations, determination of BAL is undertaken on a site by site basis, in conjunction with a proposed development, and in many instances requires the expertise of a bush fire consultant in combination with referral to the Rural Fire Service.

It is understood that the Code does not allow for development on land identified as BAL-40 or BAL-FZ. However, the determination of this BAL rating is not straightforward and the removal of oversight by the Rural Fire Service for these developments is not considered appropriate in a highly bushfire prone location like the Blue Mountains.

Lot Width Data:

As indicated and agreed at the meeting of 18 June 2020, Council is happy to provide information available under current systems but is not resourced to complete a separate data analysis project to extract unmapped data. The Council has not mapped data on lot width, and therefore this data is not easily available without a lot by lot investigation.

Land zoned R2 and R3 and relevant lot sizes:

The following tables show the number of lots in the R2 Low Density Residential zone. The tables also provide the number of lots within that zone that are bush fire prone, and an analysis of the number of lots to which the Code applies once certain exclusions have been applied (Heritage Conservation Areas for example).

Importantly, large areas of the lower Blue Mountains (such as Blaxland, Mount Riverview and Springwood) have no such excluded areas. These areas experience the greatest development pressure from Sydney and would be available under the Code.

Table 1 identifies those lots with an area greater than 720sqm. Blue Mountains LEP 2015 allows for dual occupancy on these lots in certain circumstances under clause 4.1B(3), to provide for housing diversity through a smaller built footprint. The Code would apply to these lots, without the requirement for a limited built footprint or to consider bush fire with the same level of oversight. As detailed below, the Code would apply to more than 1500 lots, more than 50% of which are bush fire prone.

Similarly, Table 2 uses the same parameters but identifies lots within the R2 zone with a lot area of between 900-1100sqm, and those lots over 1100sqm.

Table 1: Dual Occupancies (R2 Low Density Residential): Minimum lot size 720sqm (clause 4.1B(3))

Zone	Total lots	Bushfire prone lots	% of bushfire prone lots	No. of lots to which the Code applies (no exclusions) with lot size >720sqm	Bush fire lots to which the Code applies (with exclusions *) with lot size >720sqm	% of bushfire prone lots
R2 Low Density Residential	7004	3194	45.6%	2640	1512	57%

* Heritage Items, HCA, 100m to WHA, unsewered lots, special area

Table 2: Dual Occupancies LEP minimum lot size (R2 Low Density Residential)

	Total lots	No. of lots to which the Code applies with lot size of 900sqm to 1100sqm (attached dual occupancy)	No. of lots to which the Code applies with lot size 900sqm to 1100sqm that are bushfire prone	No. of lots to which the Code applies with lot size >1100sqm (detached dual occupancy)	No. of lots to which the Code applies with lot size >1100sqm that are bushfire prone
R2 Low Density Residential	7004	913	406	512	283

There is a similar impact in the R3 Medium Density Residential zone. It is noted that the Code excludes development of multi dwelling houses (terraces) on bushfire prone land. However, this land can still be developed for the purpose of manor houses under the Code. This is detailed in Table 3 below.

Table 3: Manor Houses and Multi Dwelling Housing (Terraces) – (R1 General Residential & R3 medium Density Residential)

Zone	Total lots	Bushfire prone lots	% of bushfire prone lots	No. of lots to which the Code applies (no exclusions) with lot size >720sqm	Bush fire lots to which the Code applies with lot size >720sqm	% of bushfire prone lots
R1 General Residential	353	39	11.05%	14	4	29%
R3 medium Density Residential	414	201	48.6%	135	72	53%

* Heritage Items, HCA, 100m to WHA, unsewered lots, special area

Impact of the Code on local housing diversity

The benefits of complying development as an alternate, streamlined approval pathway for simple, lower impact development that meets strict controls are well understood.

The Blue Mountains environment by nature is complex, with the challenges of environmental sensitivity, topography and natural hazards. A Code assessable pathway for significant residential development does not fit this environment.

As detailed previously in this letter, in the Blue Mountains, the Code will allow significantly larger development to occur on smaller lots than would be permissible under local planning controls. If no exemption from the Code is granted, amendments to Council's LEP will need to be made to minimise the impact of the Code.

As referenced, Blue Mountains LEP 2015 currently includes provisions (Clause 4.1B and separate controls for attached and detached dual occupancy) which utilise minimum lot size to provide varied opportunities for dual occupancy based on the size of land. Given minimum lot size is the mechanism by which the Code applies, the Blue Mountains LEP will need to be amended to remove these clauses and include a single minimum lot size for this type of development. This will result in a significant loss of housing diversity options at the local level.

Therefore, this one size fits all approach will not increase housing diversity in the Blue Mountains. Rather, it will remove existing opportunities that are locally appropriate and have been working well to provide diverse housing choice for the community.

3. Local planning for housing diversity

In previous correspondence (and in responses to the media) it has been asserted that Council has not made use of the period of deferral from the Code. As you are aware the issues identified and Council's case for an exemption cannot be resolved through a planning proposal.

It is our understanding that the deferral from the Code was to give Councils adequate time to plan for the housing needs of their communities and to consult with their communities on housing.

Blue Mountains Council used this time to undertake substantial work on local housing and housing diversity, through the Local Strategic Planning Statement process and preparation of a Local Housing Strategy, as summarised below:

- The Local Strategic Planning Statement and Local Housing Strategy was adopted by Council on 31 March 2020. This followed:
 - A detailed assurance process with the Greater Sydney Commission, attended by the Department of Planning, Industry and Environment
 - Inclusion of an action in the Local Strategic Planning Statement to seek an exemption from the Low Rise Code
 - Widespread community support for this approach, as well as support from Water NSW for the Blue Mountains to be exempt from the Code
- The Local Housing Strategy adopted by Council on 31 March 2020, investigates in detail the current and future housing needs of the local community. In particular, it:
 - Includes a survey of housing preference within the local community.
 - Proposes a range of strategies to improve housing diversity within the City to meet these needs.
 - Demonstrates that the 5-year housing target can be met or exceeded under current local planning controls
 - Nominates a 6-10-year housing target, which aligns with the housing target range provided by the Greater Sydney Commission (GSC) in their letter of support received at the finalisation of the LSPS Assurance process
 - Aligns with and responds to the classification of the Blue Mountains as a Metropolitan Rural Area (MRA) in the Western City District Plan. This

classification means that the Blue Mountains is not expected to accommodate growth from Sydney.

- Council consulted with the community in good faith, seeking their input into the strategic direction for the City. The imposition of the Code undermines this strategic planning and community engagement process

Local housing diversity strategies are captured as actions in the Local Strategic Planning Statement and Local Housing Strategy, and will result in future LEP amendments. These amendments would maintain the ability to provide housing diversity in areas suitable for increased densities, while also mitigating environmental impacts (including stormwater management and urban runoff), and appropriately considering residential character.

Conclusion

The detail provided here outlines the case for the Blue Mountains local government area to be exempt from the Housing Diversity Code. The issues raised cannot be resolved through a Planning Proposal.

The nature and extent of environmental constraints in the Blue Mountains are unlike any other NSW local government area. Therefore, our response to managing impacts from the urban areas of the City on this spectacular surrounding environment, must be equally customised. The introduction of the Housing Diversity Code poses an unacceptable risk to the environmental values of the World Heritage area as it allows for a substantial intensification of residential development, in terms of built footprint and hard stand areas, resulting in significant increases to stormwater run-off into the fragile receiving environment.

If the position is maintained that there will be no exemption from the Code, the Blue Mountains will have no choice other than to amend Blue Mountains LEP 2015 to remove the current provisions which encourage and provide for housing diversity. This is counterproductive and contrary to the stated aims of the Code. This is not a suitable planning outcome. The opportunity exists for the Department to consider other options, which could include the exclusion of all land classified in a District Plan as Metropolitan Rural Area (MRA) from the Code. This will recognise the State Government's own strategic planning which has defined, through the MRA, those areas of high environmental or agricultural significance which are only expected to accommodate local housing growth, not the growth of Greater Sydney.

We welcome the opportunity to discuss the matter further if required. Please contact me on (02) 4780 5759 or wlangevad@bmcc.nsw.gov.au.



WILL LANGEVAD
Director Environment & Planning Services



6 August 2020

Our Reference File: F00678 / 20/166379

The Honourable Robert Stokes MP
Minister for Planning and Public Spaces
Department of Planning, Industry & Environment
GPO Box 5341
SYDNEY NSW 2001

Dear Minister Stokes

SUBJECT Blue Mountains City Council and exemption from the Low Rise (Housing Diversity) Code

I write to thank you for the opportunity provided to the Mayor, Councillor Mark Greenhill OAM and Will Langevad (Director - Environment & Planning Services) to meet with you last Thursday, 30 July 2020, to discuss the Council's case for exemption from the Low Rise (Housing Diversity) Code.

We greatly appreciated the productive nature of the meeting, which confirmed the commitment of both Council and the Department to meeting housing diversity outcomes at the local level.

The following briefing note has been prepared to demonstrate the measures Council currently has in place to achieve housing diversity, and the extensive strategic work completed in the last two years. This work ensures our local planning framework and strategic direction addresses local housing need, is appropriate for our unique environmental setting, and responds to state government requirements as evidenced by our Local Strategic Planning Statement (LSPS) and Local Housing Strategy.

Summary level detail is provided across the planning fundamentals for the Blue Mountains, as presented at the 30 July meeting. This is supported by the detailed letter sent to Meagan Kanaley (Director of Codes and Design) on 29 July 2020 in anticipation of our meeting.

Completion of extensive strategic planning work

Substantial strategic planning work has been completed over the past two years. This work has focused on housing diversity, residential character and heritage - drawn together in Council's LSPS, *Blue Mountains 2040: Living Sustainably*.

The Council exhibited a Local Housing Strategy (in support of the LSPS), focused on housing diversity to meet local need. Detailed analysis prepared for this strategy demonstrates not only that housing targets can be met or exceeded, but also that local controls provide for housing diversity. It nominates town centre master planning work as a key mechanism to investigate housing diversity. A masterplan has been adopted

for Blaxland and Springwood town centres and the process has commenced for Katoomba.

Within the same period, the Character Study and Character Statement 2020 were completed, responding to the Character Guideline produced by DPIE. The catalyst for this extensive character work was in part, the suggestion by the Department in November 2019 that character overlays may represent a solution to Council's concerns over the Code and a potential way forward for resolving Council's broader residential character concerns. The Department was not in a position to progress this work within a timeframe that supports the introduction of the Code.

A significant LEP amendment was completed in 2017-2019 to list seventeen (17) new heritage conservation areas. This was the most significant heritage work by the Council in more than a decade. It converted Period Housing Areas to Heritage Conservation Areas, thereby protecting these significant residential areas from potential demolition under the Code, and limiting application of the Low Rise Code.

Action for exemption from the Code in Council's LSPS

In the context of the evidence base provided by this extensive strategic work completed, two actions (Actions 1.3 and 5.7) were included in the Council's LSPS. Both of these actions seek an exemption from the Low Rise Housing Diversity Code on the basis of unacceptable environmental impact and incompatibility with the residential built character of the Blue Mountains. These actions have been endorsed in conjunction with *Blue Mountains 2040: Living Sustainably*, through the Greater Sydney Commission assurance process. Blue Mountains received its letter of support on 18 March 2020, and the LSPS was made on 31 March 2020.

Loss of housing diversity under the Code

Unlike many councils, Blue Mountains LEP 2015 currently includes controls at cl. 4.1B (Minimum lot sizes for dual occupancies) which provide for a sliding scale of dual occupancy development based on lot size and development type. This opportunity for housing diversity is currently available to 50% of all R2 zoned lots. To respond to the Code as presently drafted, some of these provisions would need to be switched off, and a single minimum lot size included in the LEP for dual occupancies.

For instance, an amending LEP to install a minimum lot size of 1100m² for all types of dual occupancies, would reduce the opportunity for dual occupancies to just 11% of R2 zoned land (refer to Attachment 1). This results in both a loss of housing diversity, affordability and the potential loss of housing supply. Both of these outcomes are at odds with our common goals and the aims informing the Code. It would significantly frustrate the ability to deliver hidden density through this development type, which is a key deliverable for an area like the Blue Mountains.

Affordability

Additionally, Council is currently part of the core project team for the development of the Western Sydney Affordable Housing Strategy in collaboration with the Western City Planning Partnership. This joint project is to ensure a coordinated approach to affordable housing across the Western City, while acknowledging and responding to the points of difference within each local government area in the Parklands City.

For the Blue Mountains, affordable housing opportunities will likely come in the form of hidden density through development types such as dual occupancies. Should we be required to switch off existing local provisions to respond to the Code (as outlined above), this will limit opportunities for this housing type, thereby further constraining the provision of affordable housing.

Place-based outcomes for the Blue Mountains

Part 7 (Development in villages) of Blue Mountains LEP 2015 includes precinct objectives for key residential areas of the City. You recognised the benefit of these precinct controls in working to finalise the Blue Mountains standard LEP to ensure place-based outcomes developed with the community could continue to be achieved. These would be set aside under the Code and the fine-grained assessment to achieve suitable place-based outcomes would be lost.

An example of a negotiated process on a key, gateway precinct in Leura involving the Local Planning Panel and the Land and Environment Court is provided at Attachment 2. This demonstrates the detailed, place-based design approach and the emphasis on retention of pervious area and creation of a landscape setting, to both manage stormwater outcomes and achieve the objectives of the precinct under the LEP. This example also demonstrates the benefits achieved through the process of assessment and consideration by the Local Planning Panel, which would be lost under the Code.

Stormwater management

The urban areas of the Blue Mountains drain into the surrounding World Heritage Area and ultimately into Sydney's drinking water catchment. The management of stormwater on a plateau is supported by best practice, local stormwater controls in Blue Mountains LEP 2015. This is directed at both the quality and quantity of stormwater leaving a site. In place for 15 years (first implemented under LEP 2005), these controls are reflected in clause 6.9 of LEP 2015. In our meeting in 2015 you recognised the importance of this clause applying to the Blue Mountains.

Not only does the Code allow more intense development, with greater site coverage and less pervious area, but it does not provide the required level of statutory control to manage this increased stormwater runoff. The approach to stormwater management in the Blue Mountains has been supported at the state level. Firstly, with the initiating action of the Council's LSPS to commence implementation of our Water Sensitive Strategic Plan, as assured by the Greater Sydney Commission. Further, Council received a public submission from Water NSW to the LSPS acknowledging the action to seek an exemption from the Code and suggesting Council further extend its approach to Water Sensitive Urban Design.

Local Planning Panel position on a Blue Mountains exemption

On 27 July 2020, the Blue Mountains Local Planning Panel (LPP) was briefed in accordance with the Ministerial Direction, on the preparation of a planning proposal to respond to the Low Rise Housing Diversity Code. The LPP expressed significant concern for both the loss of housing diversity that would result from the planning proposal and the incompatibility of the Code with the residential character and unique, world heritage listed environmental setting of the Blue Mountains. The key matters of concern are captured in the LPP determination (Attachment 3) and are consistent with those outlined in this letter.

Way forward

As you are aware, some 45 councils initially sought deferral of the application of the Low Rise Code. As one of those councils, Blue Mountains City Council has moved in the past two years to advance its strategic planning framework to appropriately foster housing diversity. Unlike other councils, the assured LSPS specifically seeks to secure an exemption to the Low Rise Code in order to preserve character outcomes and management stormwater for a City within a World Heritage Area.

The Blue Mountains LEP 2015 has been crafted to include place-based precinct objectives which form the basis of assessing multi-residential development, often in conjunction with the Local Planning Panel, to achieve outcomes commensurate with these localities. Also as a point of difference, the LEP 2015 includes a sliding scale provision for dual occupancy, making the introduction of a single minimum lot size to support the Code unworkable with our shared objective of providing housing diversity.

These points, evidenced by the LSPS and LEP 2015, work toward the need to critically evaluate the application of the Low Rise Code in the Blue Mountains, which is an area that has historically had negligible take-up of complying development and has been identified as a Metro Rural Area (MRA).

With reference to the MRA, the Department has now endorsed maps identifying this land classification (as part of the recent amendment to application of the Seniors Housing SEPP). These mapped areas could now be utilised as a mechanism to exclude the MRA in the Blue Mountains from the Code, drawing on a similar rationale.

The formulation of the LSPS and the review by the Local Planning Panel suggest the need for exemption. Our meeting of 30 July 2020 has underscored the common objectives for housing outcomes and the need to exempt the Blue Mountains from the Low Rise Code for the reasons set out above.

It would be appreciated if these factors be the subject of further and timely review in order to ensure that future housing provision does not compromise the Blue Mountains planning framework and the outcomes sought by the Department. The Council will postpone the finalisation of any planning proposal to amend minimum lot size controls, awaiting your response.

Please contact Will Langevad – Director of Environment & Planning Services on 4780 5759 or wlangevad@bmcc.nsw.gov.au to further discuss the Council's case.

Your sincerely

Dr Rosemary Dillon
Chief Executive Officer

Cr Mark Greenhill OAM
Mayor

Copied to:

Trish Doyle MP (*Member for Blue Mountains*)

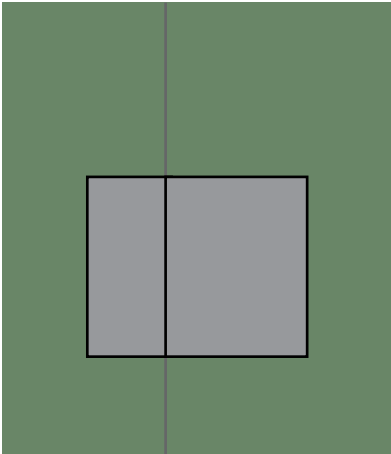
Stuart Ayers MP (*Member for Penrith*)

Marcus Ray (*Group Deputy Secretary, Planning and Assessment, DPIE*)

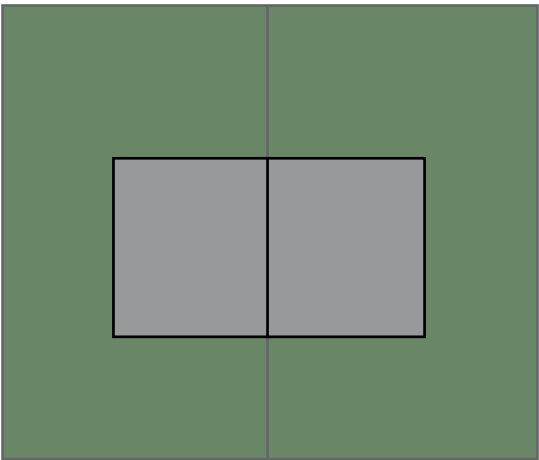
Meagan Kanaley (*Director Codes and Design, DPIE*)

Minimum Lot Size (MLS) for Dual Occupancies in LEP 2015

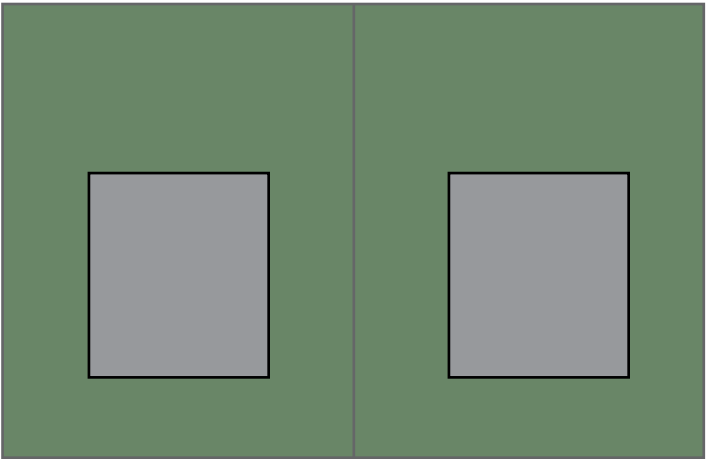
7004 Lots in R2 zone



>720m2 Lot
Attached Dual Occupancy
(1 dwelling max GFA 100m2)
3,589 lots (51% of R2 lots)



>900m2 Lot
Attached Dual Occupancy
1,708 lots (24% of R2 lots)



>1100m2 Lot
Detached Dual Occupancy
792 lots (11% of R2 lots)



Example of good outcomes under local provisions - Leura



BLUE MOUNTAINS CITY COUNCIL
BLUE MOUNTAINS LOCAL PLANNING PANEL (LPP):
DETERMINATIONS

27 July 2020

INDEX

3. BRIEFING ON PLANNING PROPOSAL TO AMEND BLUE MOUNTAINS LEP 2015 IN RESPONSE TO THE LOW RISE MEDIUM DENSITY HOUSING CODE

PANEL COMMENT

That the panel after eighteen months experience of working with Blue Mountains City Council in this World Heritage context does not support the commencement of the Low Rise Housing Diversity Code (previously named the Low Rise Medium Density Housing Code) within the Blue Mountains LGA and consequently supports the Council's request for an exemption from this Code for the following reasons:

1. The Code has the potential to undermine the listing of the Blue Mountains as a World Heritage area. The Greater Blue Mountains World Heritage Area is a million hectares of national park and wilderness and it is a significant factor that it is one of only two cities in the world that exist within a World Heritage area, the other being Banff in Canada. Sites which are protected under the UNESCO World Heritage List are defined as having '*cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of importance.. for all humanity*'.
2. The Council's management of 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, was 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 heritage listing. Accordingly, this was embodied in its Local Environmental Plan and Development Control Plan.
3. The Blue Mountains Planning Panel is of a view that the Low Rise Housing Diversity Code will not only result in outcomes that are inconsistent with the significant character of the 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 code does not:
 - a. 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.
 - b. Appropriately consider, respond or enable assessment of the bush fire risk within the local government area.
 - c. Provide guidelines which are appropriate to an urban area within a World Heritage listed landscape setting. The *Low Rise Housing Diversity Design Guide* 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.
 - d. The Built form and Landscape development standards contained within the code will result in higher density forms of residential and landscape settings out of character with the urban areas of the Blue Mountains that are significant in providing a unique urban form within a World Heritage listed area setting.
4. State Government requirements for housing supply and housing diversity have been demonstrated as being able to be met via existing local planning controls without the need for expansion of code assessable development under this SEPP. This is supported by the Blue Mountains Local Strategic Planning Statement and the Blue Mountains Local Housing Strategy 2020.


5. The Council has for many years approved numerous dual occupancies within the local government area based on their current controls that were crafted to ensure that the unique characters of the Blue Mountains settlements and the adjacent natural areas are protected. These are important elements in the attraction of the area to both residents and local and international tourists.

"The Blue Mountains National Park has the highest visitation of any National Park in Australia, more than 4 million visitors per annum, due to its accessibility and impressive natural features. (Source: National Parks Wildlife Service statistics)."

* * * * *

4. DETERMINATIONS AUTHORISED BY PANEL

Determinations authorised by Panel



Panel Chair – Mary-Lynne Taylor



Stephen Leathley



Deborah Sutherland



Narelle Wheatland

* * * * *

Blue Mountains City Council
Submission on Explanation of Intended Effects - Local Character Provision

Introduction

Thank you for the opportunity to respond to the proposed local character overlay and draft local character clause, on exhibition until 29 January 2021.

Council is supportive of the recognition of character and agrees with the Department's assertion within the Explanation of Intended Effects (EIE) that "local character is important in developing strong, unique, desirable and design-led communities". As previously raised with the Department, an approach that elevates the importance of character in local planning, and a framework that provides protection as expected by local communities, is valued. This position is reflected in our endorsed Local Strategic Planning Statement, Local Housing Strategy, and Local Character Statement.

However, several continuing concerns are raised, the most pertinent being the Blue Mountains should not to be considered in the same way as metro Sydney, or even other regional areas. The City of the Blue Mountains has an exceptional established character which reflects the City's spectacular natural setting as well as unique European settlement history. This character is integral to the City's identity and is a significant attractor for visitors. It also contributes to the amenity and atmosphere valued and enjoyed by the local community.

Blue Mountains City Council has long recognised the value and importance of local character. The local planning framework has historically contained purposeful local character provisions in local environmental plans (LEP) which were translated where possible into the standard instrument (SILEP). In addition, Council has advocated for recognition of character through the planning framework for an extensive period.

To protect and enhance local character, it is necessary that Council retains the agency to meaningfully engage in place-based planning that is responsive to local conditions, with certainty of character protections.

An issue specific to the Blue Mountains is that significant areas of the LGA remain deferred from the SILEP because there is currently no way to translate current character protections that apply to the Living-Conservation zone under LEP 2005 into the standard instrument. This deferral has been to allow consideration on how best to incorporate the clear character outcomes of this LEP 2005 zone into the Standard Instrument, with ongoing discussions with the Department since the preparation of DLEP 2013. The resolution of the issue must achieve the same planning outcome as that achieved under the Living-Conservation zone. It has been and remains Council's view that this is best achieved by a Residential Character zone. In the absence of such a zone, any solution must provide appropriate protection for character areas, that is integrated into the planning system and locally applicable rather than a one size fits all approach.

Following is general feedback, concerns and questions in response to the proposed local character overlay and draft local character clause, as well as detailed comments on key aspects. Recommendations from Council are provided for each section and summarised at the end of this submission.

1. Maintaining strong local strategic planning controls

Blue Mountains City Council has a history of proactive strategic planning for local needs, through robust community endorsed place-based planning. This is successfully demonstrated in the maintenance of local character protections whilst meeting housing targets as set by the Greater Sydney Commission (GSC). These housing targets acknowledge the importance of character considerations to the tourism economy and built environment in the Blue Mountains. Importantly, this GSC assurance process recognised and supported key planning priorities contained in Blue Mountains 2040: Living Sustainably Local Strategic Planning Statement (LSPS). In particular local Planning priority 5 conserving and enhancing heritage, character and liveability contains a number of actions assured by the GSC, including action 5.1 “Council will continue to pursue a Residential Character zone or alternate planning solution within the Local Environmental Plan to retain and enhance the residential character of the Blue Mountains”.

It is also important to note that our response in the LSPS addresses key actions from the Western City District Plan. This was informed by significant strategic planning work undertaken to prepare supporting studies including the Blue Mountains Character Statement 2020, which is consistent with the Local Character and Place Guideline published February 2019.

Character considerations in the Blue Mountains, ranging from rural landscape character, bushland character, unique town and village character, through to traditional streetscape character, are also embedded into the zone objectives of LEP 2015 endorsed by the Department.

The introduction of policy that seeks to move away from, or unnecessarily duplicate, existing strategic work is problematic. In order to respond to local needs, it is likely that a range of character overlay types would be required, for example, Precincts/Town Centre character, Living Conservation zone objectives character and bushland character. The capacity for multiple character overlays in a LEP, reflecting the plurality of local character across the Blue Mountains, is unclear.

Recommendation: Confirmation be provided regarding the supportability of multiple character overlays in order to suitably plan for local needs.

2. The case for zone based character protection

The consistent and long-held view of Council is that the introduction of a Residential Character zone in the Standard Instrument is the most appropriate mechanism to achieve protection for residential character areas. It is however noted that the introduction of a character overlay provides the opportunity to recognise and guide the character of other areas within a City.

There are however key differences in a character zone versus a character overlay. While it is likely more urban metropolitan Councils will benefit from a character overlay to recognise the particular character of certain precincts or special, it is not intended for a whole of zone resolution.

Residential areas typical make up the bulk of the urban area of an LGA, and the character of these areas contributes significantly to the overall character or identity of an area.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Local Character Provision

Further, being the character of the areas where people live, it also contributes significantly to the wellbeing and amenity of the community. For these reasons, the recognition of the importance of residential character and its protection warrants particular consideration.

A residential character zone would allow an LEP to contain zone objectives which recognise local character and control permissibility of uses which are fundamentally incompatible with the desired character of an area. For residential areas, this is not currently possible with the suite of zones available in the standard instrument.

Character overlays have the potential to be a solution to the current status of deferred matters (being the conversion of the Living Conservation zone under LEP 2005 to the standard instrument). Should Council investigate a character overlay to resolve the outstanding Living Conservation zone matter, certainty that Council can select the most appropriate zone and that these provisions cannot be switched off, is fundamental.

In the absence of this clarity the position of Council remains that the introduction of a Residential Character zone in the Standard Instrument is the most appropriate mechanism to achieve protection for residential character areas.

Recommendation: Local place-based planning remains the preferred mechanism for appropriately maintaining and enhancing character, through a residential character zone.

3. Certainty in drafting the Local Character Clause

There is lack of clarity and strength in the draft clause, with ambiguity surrounding interpretation. For example, subclause (2) calls up a single local character area statement, with a date of publication, which is problematic with regard to amendments, particularly as finer grain studies are added over time.

Further, draft subclause (3) the term “taken into account” is used, but does not provide clear guidance for developers or the consent authority. Lack of clarity invites a litigious environment and could have legal implications, should a DA be challenged. Clear and unambiguous wording is required within an LEP clause, to provide guidance and minimise legal risk.

For clarity and removal of ambiguity, it is suggested that the local character clause follow the convention of model or settled clauses which typically place a restriction on the granting of development consent unless the consent authority is satisfied that clear criteria are met. For example, subclause (3) could read: “Development consent must not be granted for development to which this clause applies unless the consent authority is satisfied the development appropriately responds to the *Local Character Areas Statement* for the land”

Recommendation: The draft clause be reworded to provide clarity for applicants and assessing officers, using the convention of existing model or settled clauses.

Recommendation: Remove reference to a date in relation to local character statements and provide an option for Council to modify statement/s over time without needing to make amendments to the LEP.

4. Confirming role in planning assessment hierarchy

The draft Local Character Clause calls up character statements for the purposes of development assessment, potentially confusing their role in assessment process compared to Development Control Plans (DCP). Clarification is sought in relation to where these local character statements sit within the planning assessment hierarchy of controls. Concerns are also raised as to whether additional considerations will introduce undesirable complexity to the planning system, for both developers and assessing officers, and whether an overlay will trigger a Local Planning Panel development application determination.

Recommendation: Clarification be provided regarding where character statements sit within the hierarchy of controls.

Recommendation: Confirm likely pathway for development application determination if a character overlay applies, whether by delegated authority of the Local Planning Panel.

5. Clarifying intersection of Local Character Provision and existing planning provisions

The EIE refers to several NSW councils already using map layers to capture and identify character areas, with the proposed provision to ensure consistency and effective alignment. BMCC currently utilises built character mapping, supported by precinct controls within the LEP and DCP. The EIE also indicates that Councils need to consider the consolidation of current overlays in their LEP with the local character layer. Clarification is required as to the explicit expectations surrounding this, and whether consolidation is intended to mean the removal of existing built character provisions to be replaced by a character overlay, or whether these two different considerations are intended to sit side by side with different mapped layers.

Clarification is also required regarding the relationship between intersecting planning provisions, such as heritage conservation areas (HCA). This includes confirmation if the proposed local character provisions foreshadow future changes to existing protective layers. Further, clarification whether the character overlays be permitted to overlap with a HCA is requested, noting that the need to protect heritage value, such as architectural styles, is separate from character which can often relate more to streetscape and landscape. The heritage of an area may not be part of its character, for example, but both need to be considered in the design and assessment of a development. Moreover, the state standard criteria for heritage consideration differs to character considerations.

It is reasonable in a Blue Mountains setting that a character (built or bushland) overlay might also intersect with a HCA, each serving different purposes. For overlays to be successful, it is necessary that the character of an area is not diminished through combining separate planning considerations into a consolidated mapping layer, which lacks bespoke protections.

As proposed, there is risk that the local character provisions could introduce an added layer of complexity. Whereas, protection of character through zoning, with clear zone objectives and intersection with other protections such as HCAs. This would be a stronger and less complicated mechanism to achieve desired outcomes.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Local Character Provision

Recommendation: The expectations between Local Character Provisions and existing character mapping be made explicit, particularly with regard to consolidation requirements.

Recommendation: That the interrelationship between Local Character Provisions and Heritage Conservation Areas, as well as any future intent to amend existing protective layers, be made clear.

Recommendation: Confirmation that the functions of existing and proposed protections are retained.

6. Resolving exemption requirements to Low Rise Housing Diversity Code

Complying development pathways that negatively impact our identified character areas through allowing uses and accompanying building types and density that erode built form patterns and overall character, is undesirable and at odds with character protections.

It is understood that Clause 1.19 of the Codes SEPP will be amended to introduce a subclause to state that any land identified as being within an “exclusion zone” will be unable to seek approval through the complying development pathway under Part 3B Low Rise Housing Diversity Code. However, the details of how this will take effect are problematic and deal directly with the suitability of the proposed clause to LEP 2015.

The Department has confirmed the broader provisions concern themselves with how a place will respond to a growing population. The Blue Mountains Local Government Area (LGA) however is a low growth area, with endorsed housing targets by GSC commensurate with the unique environmental considerations of the area. Fundamentally therefore, these provisions are at odds with retaining or enhancing character if tied to growth, maintaining an ever present Sydney centric approach that is not suitable for a metro rural area.

The requirements, in terms of evidence, resourcing and duplication of existing work, in order to seek exemption approval from the Low Rise Housing Diversity Code are extensive and onerous, without any certainty of support. Further, the Department have indicated they will retain the ability “switch off” exclusions if housing targets, or a diverse range of housing, is not being delivered in the area. Therefore, exclusion provides no certainty regarding retaining and effectively enhancing distinctive character and removes the ability to plan for local needs.

Council will be writing to the Department to separately continue to seek exemption to the Code. Significantly, character is only one issue identified in relation to inclusion in the Low Rise Housing Diversity Code, and does not adequately address previously raised concerns such as stormwater and other adverse environmental impacts. Council therefore seeks a broader zone based exemption to the Codes SEPP, and the Low Rise Housing Diversity Code in particular.

At a minimum, deferrals from the Low Rise Code should be made available to Councils to allow the preparation of the necessary work to seek an exclusion area. This would protect the character of these areas in the interim. It is noted that there was a previous deferral from the Low Rise Code for many Councils when it was first introduced, however the character overlay provisions or a pathway for exclusion for certain areas were not available at that time. Undoubtedly, Councils would have undertaken the necessary work previously had these planning mechanisms been available.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Local Character Provision

Recommendation: That Blue Mountains be excluded from the Low Rise Housing Diversity Code, until such time that character and environmental protections can be assured.

Conclusion and recommendation summary

The existing approach to character considerations in the Blue Mountains is strongly researched, well considered and community endorsed. While the proposed amendment has the potential to provide a range of protections for local character, there is concern about the efficiency of the overlays to maintain current strong controls around local character, the role the clause will have in the development assessment process and existing protections, and the interplay with state policies, particularly in relation to exempt and complying development.

Summary of recommendations:

- Confirmation be provided regarding the supportability of multiple character overlays in order to suitably plan for local needs.
- Local place-based planning remains the preferred mechanism for appropriately maintaining and enhancing character, through a residential character zone.
- The draft clause be reworded to provide clarity for applicants and assessing officers, using the convention of existing model or settled clauses.
- Remove reference to a date in relation to local character statements and provide an option for Council to modify statement/s over time without needing to make amendments to the LEP.
- Clarification be provided regarding where character statements sit within the hierarchy of controls.
- Confirm likely pathway for development application determination if a character overlay applies, whether by delegated authority of the Local Planning Panel.
- The expectations between Local Character Provisions and existing character mapping be made explicit, particularly with regard to consolidation requirements.
- That the interrelationship between Local Character Provisions and Heritage Conservation Areas, as well as any future intent to amend existing protective layers, be made clear.
- Confirmation that the functions of existing and proposed protections are retained.
- That Blue Mountains be excluded from the Low Rise Housing Diversity Code, until such time that character and environmental protections can be assured.



10 February 2021

Our Reference File: 20/203675 (F00678)

Hon Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Via email: Office@Stokes.minister.nsw.gov.au

Dear Minister Stokes

SUBJECT Blue Mountains City Council: Proposed character overlay provisions and the application of the Low Rise Code

We write following our meeting on 30 July 2020, also with Will Langevad – Director Environment and Planning, and the subsequent correspondence received from Marcus Ray of the Department. This letter is also in response to the Character Overlay EIE recently on public exhibition. In particular, it responds to the suggestion by the Department that the proposed character overlay can work to address the Council's significant concerns in relation to the Low Rise Housing Diversity Code.

Blue Mountains Council supports the focus of the Department on local character through the character overlay initiative, and we have undertaken a careful review of the exhibited material. However, the proposed overlay does not provide surety around character protection, will result in a substantial resourcing impost to provide the required detail and evidence required to support an overlay, and does not address the core concern of the Council in relation to the Low Rise Code.

As you are aware, Blue Mountains has long had a place-based local planning framework, key to which is the value and protection of local character. At our meeting on 30 July the unique issues facing the Blue Mountains were acknowledged, and there was positive recognition of the significant strategic work done by Council to plan for increased housing diversity within this context.

Council took your commitment to investigate an avenue for exclusion from the Low Rise Code in good faith. As such, Council has stalled its own strategic planning and not proceeded with a LEP amendment to change minimum lot sizes for multi-unit housing and dual occupancy land uses, as this would have the effect of reducing housing diversity as explained at our meeting. We have instead trusted that an appropriate solution would be offered by the Department. This has not happened.

The Department's Explanation of Intended Effect does suggest the potential for exclusion of certain character areas from the Low Rise Code, and it is clear that this would address the concerns of many Metropolitan Councils. However, an exclusion for only certain character areas does not work for the Blue Mountains and does not

address the issue of environmental management. The importance of stormwater management due to the environmental significance of the surrounding World Heritage Area is not addressed by the proposed character overlay mechanism.

The exhibition of draft provisions to facilitate character overlays, nearly six months after the Low Rise Code came into effect, does not represent an orderly or coordinated approach to reform. The work now required to provide justification for a character overlay (as identified in the exhibited EIE) is substantial and highly resource intensive for a Council like the Blue Mountains. We are understandably hesitant to commit to resourcing this work based only on an exhibited draft that may not proceed, and where the exhibited draft does not address the core issues we have raised.

Significantly, the issue of housing diversity Council raised with you at our meeting of 30 July 2020 cannot be addressed by character overlays, as some of these areas are outside of existing character areas. As explained, the Code results in Council needing to remove existing clauses in LEP 2015 to provide a single minimum lot size for dual occupancies across the Blue Mountains, thereby taking away current diversity opportunities - an outcome directly contrary to the stated intent of the Code.

Council's position remains that the entire Blue Mountains LGA should be excluded from the Low Rise Code due to the unique environmental value of the surrounding World Heritage Area. The context and constraints on the City of the Blue Mountains have been recognised through the District planning process and the classification of the entire LGA as Metropolitan Rural Area (MRA).

It is therefore unclear why the Department will not consider the same principles that it has applied in amending the Seniors SEPP to exclude all MRA areas. An exclusion of MRA from the Low Rise Housing Diversity Code would allow Council to continue to implement local planning for housing diversity as identified in the LSPS, with line of sight to the Regional Plan and District Plans.

The Council is increasingly frustrated that the work Council has done to develop and implement our LSPS and Local Housing Strategy, is not recognised by the Department in these most recent policy reforms. The assurance process that validated the housing targets for Greater Sydney, was also that which confirmed the action in the Blue Mountains LSPS to seek exemption from the Low Rise Code (actions 1.3 and 5.7 in *Blue Mountains 2040: Living Sustainably*).

Minister, we have met you in relation to character on two significant occasions – in September 2015 on a proposed Residential Character zone and mostly recently in July 2020 on the Low Rise Code and its adverse impact on the character, environment and housing diversity of the Blue Mountains. On both of these occasions we have had clear commitment from you and your Department to work with the Council to resolve this important planning consideration. Disappointingly, on neither occasion has this commitment resulted in an outcome responding to the issues raised or a solution which achieves the planning intent agreed by all parties at these meetings.

We therefore reiterate our request for exemption of the Blue Mountains from the Low Rise Housing Diversity Code. If the Department is genuine about working with Council to protect the character and housing diversity of the Blue Mountains, then as a first step it would be reasonable to implement a temporary exclusion for the Blue Mountains from the low rise code to allow for further discussion on the way forward.

The most appropriate contact to discuss this matter further is Will Langevad, Director Environmental and Planning Services on 4780 5759 or wlangevad@bmcc.nsw.gov.au.

Yours sincerely,



DR ROSEMARY DILLON
Chief Executive Officer



Cr MARK GREENHILL OAM
Mayor



25 March 2021

Our Reference File: 20/60995 (F00678)

Hon Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Via email: Office@Stokes.minister.nsw.gov.au

Dear Minister Stokes

SUBJECT Blue Mountains City Council: Proposed character overlay provisions and the application of the Low Rise Code

In light of statements made at the Budget Estimates public hearing on 9 March 2021, I write to follow up on recent correspondence from Council regarding the Blue Mountains' case for an exemption from the Low Rise Housing Diversity Code.

It is reassuring that you agree that a compelling argument has been put forward as to the unique circumstances of the Blue Mountains. However, the comments made by Mr Ray that the Department is waiting on Council to submit a planning proposal are most concerning.

Based on the positive discussions at our meeting, Council took your commitment to investigate an avenue for exclusion from the Low Rise Code in good faith and have trusted that an appropriate solution would be offered by the Department. It is disappointing that to date this has not happened, and further, that advice was provided to Senate Estimates that the Department is awaiting a Planning Proposal.

As was discussed at our meeting in July, there is no avenue for councils to seek an exclusion from the Code through a planning proposal. Further, our discussion covered the scenario that were Council to submit a planning proposal to amend minimum lot sizes for multi-unit housing and dual occupancies under the Blue Mountains LEP, this would have the effect of actually reducing housing diversity. In our meeting you understood this implication immediately based on the cascading provisions for dual occupancies in LEP 2015 based on lot size.

In this context Council's senior planning staff have advised me that the only option for the preparation of a Planning Proposal is to prepare an amendment to clause 1.9(2) of Blue Mountains LEP 2015, to list the Low Rise Housing Diversity Code as a state environmental planning policy that does not apply to the Blue Mountains LGA. In the absence of any additional response from the Department, this may represent the way forward.

I wish to again reiterate our request for exemption of the Blue Mountains from the Low Rise Housing Diversity Code as established in *Blue Mountains 2040; Living Sustainably*, our Local Strategic Planning Statement, which was supported by the Greater Sydney Commission's assurance process. We look forward to the very genuine and productive discussions we have had on this matter to date, translating into a suitable planning outcome for the City of the Blue Mountains.

The most appropriate contact to discuss this matter further is Will Langevad, Director Environmental and Planning Services on 4780 5759 or wlangevad@bmcc.nsw.gov.au.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Cr Mark Greenhill', with a long, sweeping horizontal stroke extending to the right.

Cr MARK GREENHILL OAM
Mayor



PO Box 398, Parramatta NSW 2124
Level 14, 169 Macquarie Street
Parramatta NSW 2150
www.watarnsw.com.au
ABN 21 147 934 787

15 November 2019

Contact: *Stuart Little*
Telephone: *02 9865 2449*
Our ref: *D2019/133421*

Chief Executive Officer
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Attention: Kim Barrett

Dear Sir/Madam,

RE: Blue Mountains Local Strategic Planning Statement

I refer to the public exhibition of the *Blue Mountains 2040 Living Sustainably Draft Local Strategic Planning Statement* (LSPS) that provides the 20-year vision for land use in Blue Mountains Local Government Area (LGA). The LSPS responds to the Greater Sydney Region Plan, the Western City District Plan and aligns with the key directions of the Blue Mountains Community Strategic Plan 2035.

WaterNSW's detailed comments are provided in Attachment 1. These focus on protecting key water supply assets, water quality within the Sydney drinking water catchment, and declared Special Areas. However, we have also taken the opportunity to include comments on other water-related issues where relevant.

If you have any questions regarding the issues raised in this letter, please contact Stuart Little at stuart.little@watarnsw.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Clay Preshaw". The signature is fluid and cursive, with the first name "Clay" and last name "Preshaw" clearly distinguishable.

CLAY PRESRAW
Manager Catchment Protection

ATTACHMENT 1 – WATERNSW COMMENTS: DRAFT BLUE MOUNTAINS LOCAL STRATEGIC PLANNING STATEMENT

Water Supply and the Sydney Drinking Water Catchment

Under the *Water NSW Act 2014* and *Water NSW Regulation 2013*, WaterNSW has responsibilities for managing and protecting water supply infrastructure, water quality and catchment health within the declared Sydney drinking water catchment (SDWC).

WaterNSW owns and manages key water supply infrastructure including three dams on Cascade Creek at Katoomba, the Greaves Creek Dam and Lake Medlow at Blackheath. It also owns Woodford Dam, although this is no longer used for water supply. Currently, the LSPS provides little detail on the importance of the five dams which supply which Sydney Water's Cascades Water Filtration Plant (WFP), providing water to some 49,000 residents in the middle and upper Blue Mountains.

WaterNSW also has an interest in protecting the Fish River Water Main that passes through the LGA as this can supplement the WFP with water from Oberon Dam or Duckmaloi Weir. Residents in the lower mountains are supplied with water from Warragamba Dam, treated at the Orchard Hills water filtration plant.

About 40,000 ha or 28% of the Blue Mountains LGA lies within the SDWC, encompassing land in the far west and south-west of the LGA (Map 1). The Blue Mountains LGA includes the Blackheath, Katoomba, and Woodford Special Areas (which buffer the aforementioned storages), and parts of the Warragamba Special Area which buffer Warragamba Dam. Most of the Special Areas occur within Blue Mountains National Park.

Public access is prohibited from Special Areas that are designated Schedule 1 under the *Water NSW Regulation*, and restricted where land is designated as Schedule 2 (see Map 1). Special Areas are managed jointly by WaterNSW and the National Parks and Wildlife Service directorate of the Department of Planning Industry & Environment, and in accordance with the Special Areas Strategic Plan of Management 2015.

The LSPS refers to the fact that the LGA overlaps with the SDWC (pages 22, 23, 26 and 38). However, the section on the 'Blue Mountains Context' on page 22 and 23 could also reference that more than half the LGA's population is supplied from the small catchments within the Blue Mountains itself.

Water catchment boundaries are depicted on the maps presented on pages 34 and 35 of the LSPS. These catchment boundaries are very hard to distinguish based on the colours and symbology used, and it is not clear whether the boundary of the SDWC is accurately depicted. These maps should be updated to provide greater accuracy and clarity.

Stormwater Management and Water Sensitive Urban Design

The LSPS advocates sustainable water management and delivering a sustainable water sensitive city that highly values its waterways and water resources. The LSPS's prime action is to adopt and implement the Water Sensitive Blue Mountains Strategic Plan (Action 1.1). WaterNSW has been involved in this initiative and welcomes the opportunity to work with Council in delivering this action in the SDWC. However, the reference to 'NSW Water' as a partner should read 'WaterNSW'.

We support the LSPS's commitment of investigating the integration of sustainability measures including water sensitive urban design (WSUD) within all new works on public land (Action 1.2, Action 4.8). Again, WaterNSW would welcome the opportunity to work with Council on implementing WSUD in the SDWC.

The Plan refers to Council's local planning controls that have guided the careful management of the quality and quantity of stormwater leaving the urban areas of the City for nearly two decades. Action 1.11 seeks to update the Blue Mountains Local Environmental Plan 2015 (LEP) and Development Control Plan (DCP) to protect native

vegetation and enhance WSUD controls. WaterNSW is supportive of these actions. We also provide some additional suggestions for improving the LEP provisions with regard to stormwater management and WSUD (see below).

The LSPS notes that Council's long-running stormwater management controls operate to maintain World Heritage values (page 38). The LSPS could acknowledge that these controls also operate to protect the SDWC from adverse water quality impacts.

To minimise impacts from urban stormwater, the LSPS proposes to seek an exemption from the Low-Rise Medium Density Housing Code (Action 1.3). Council could also explore employing the neutral or beneficial effect (NorBE) test for water quality protection more broadly across its LGA and beyond the bounds of the SDWC as required under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

Our comments on other water-related actions are as follows:

- Action 1.13 proposes expanding Council's existing environmental education program to include a Sustainable Living Kit and other educative tools for residents regarding the importance of sustainable living within the Blue Mountains. This relates to Strategy 2.1.b (2116) which concerns protecting the city's water catchments and groundwater. WaterNSW requests we are consulted in developing the proposed program with respect to water and catchment related matters.
- Action 1.14 seeks to investigate opportunities and State Government support, to 'retrofit existing residential properties in 'active management' catchment areas, with rainwater tanks and other WSUD measures, to improve water quality in these catchment areas'. WaterNSW is supportive of being listed as a partner agency to this action, and welcomes the opportunity to work with and assist Council in delivering this action in the SDWC.
- Action 1.18 provides a Council commitment that stormwater management throughout the City will be enhanced using best practice water sensitive methods, such that no stormwater system is directly connected to a natural stream or creek system by 2036. WaterNSW is supportive of this initiative and welcomes the opportunity to work with and assist Council in delivering this action in the SDWC.

Visitation and Tourism

The Blue Mountains LGA will come under significant pressure from increased visitation and tourism during the next 20 years as arising from the Western Sydney Airport and the projected population growth in Western Sydney. The impacts from tourism and visitation is primarily addressed under Local Planning Priority 8: Managing increased tourist visitation.

Currently, the LSPS identifies a range of impacts arising from increased visitation including parking, access, traffic, and accommodation. However, impacts arising from littering and demands on toilet and waste facilities as identified in the Visitor Infrastructure Investment Strategic Plan (April 2018) are not included in the LSPS. The LSPS broadly identifies that visitation is a risk to environmental values but risks to water quality are not specifically identified. Increased visitation can also increase pressure on the capacity and maintenance of existing stormwater and sewerage infrastructure.

The LSPS commits Council to investigating alternate funding sources for management of areas affected by increased tourism, including funding for visitor infrastructure, natural area management and risk management impacts (Actions 1.15 and 8.11). It is unclear whether this investigation ties to the Visitor Infrastructure Investment Strategic Plan. Also, the LSPS notes that updated visitation figures (URBIS 2019) suggest that both current numbers and expected growth now exceed those identified in 2017. The investment required to support visitor infrastructure and visitor services may therefore be underestimated.

In light of the above, WaterNSW considers that the LSPS could give greater recognition to the potential impacts of increased visitation on water quality and other natural values of the Blue Mountains. Council may wish to include an action that seeks to review and update the earlier Visitor Infrastructure Investment Strategic Plan to take account of the latest visitation projections and impacts of visitation on water quality and other natural values. The LSPS could also tie Actions 1.15 and 8.11 to being informed by the Visitor Infrastructure Investment Strategic Plan.

Review of the Blue Mountains LEP

Council already has comprehensive provisions in its LEP to address water quality and the management of water resources more broadly. This includes LEP aims that protect water quality and watercourses within the SDWC, zoning controls for W1 Natural Waterways, and specific local provisions for stormwater management, riparian lands and watercourses, and flood planning.

Given the prime action of the LSPS is to adopt and implement the Water Sensitive Blue Mountains Strategic Plan (Action 1.1), in reviewing the LEP as a result of the LSPS, Council may wish to include additional provisions within the LEP aims that explicitly promote water cycle management and water sensitive urban design. The Leichhardt and Manly LEPs have aims that include such provisions.

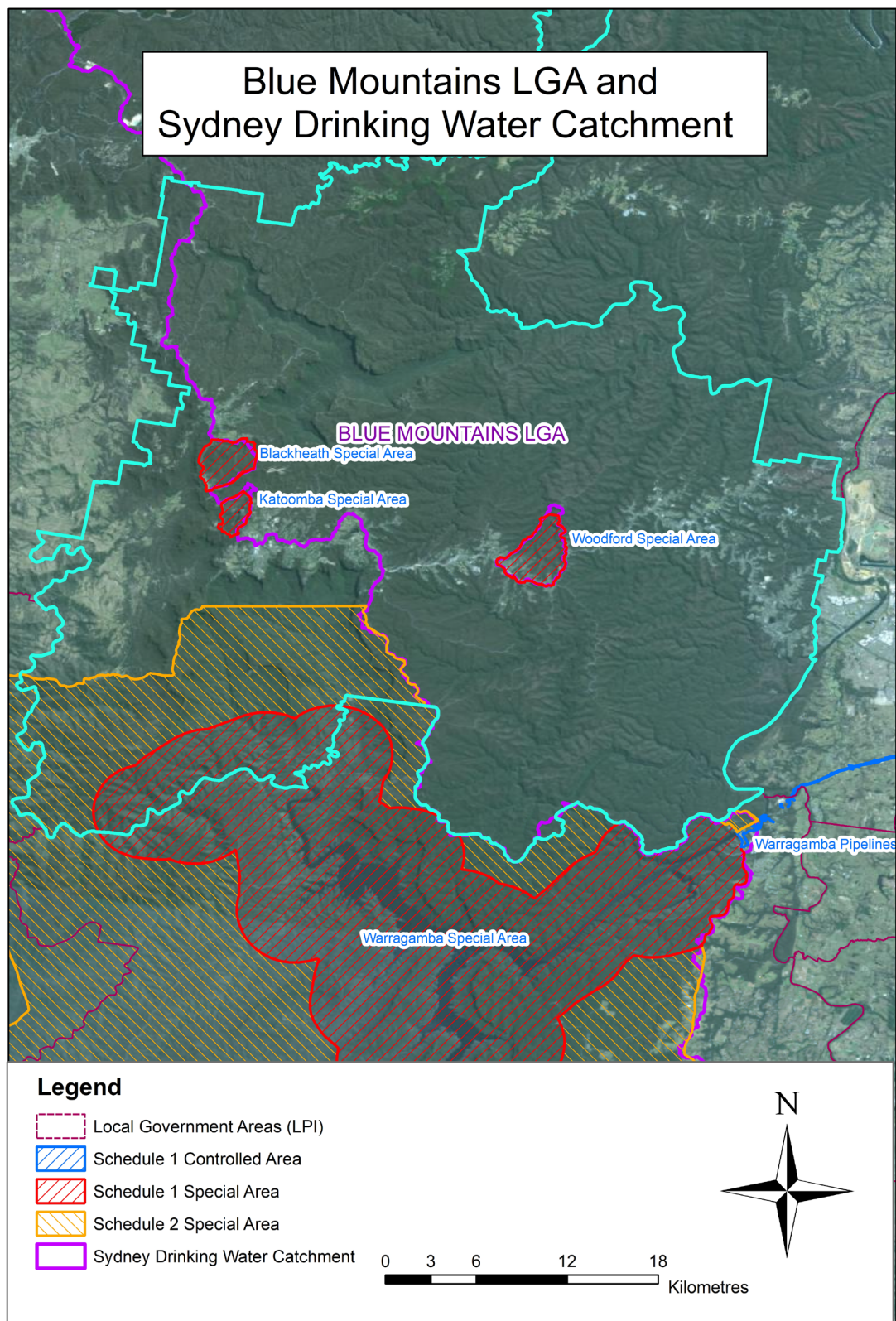
Miscellaneous

Action 1.2 should read 'water' not 'waster'

Action 1.14 should read 'improve' not 'improvement'.

Page 10 - community consultation. The LSPS could include reference to the community consultation that was undertaken, supported by WaterNSW, in May 2019 in reference to the Water Sensitive Blue Mountains Strategic Plan.

On page 51, mention could be made of improving liveability by integrating WSUD with open space, and possibly linking with Actions 1.2 and 4.8.



Map 1. Blue Mountains LGA: Sydney Drinking Water Catchment.

Dr Rosemary Dillon
Chief Executive Officer
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Letter of Support: Blue Mountains City Council draft Local Strategic Planning Statement

Thank you for submitting Blue Mountains City Council's draft Local Strategic Planning Statement (LSPS) seeking the support of the Greater Sydney Commission (the Commission) for consistency with the Greater Sydney Region Plan – *A Metropolis of Three Cities* (GSRP) and Western City District Plan. The making of LSPSs by councils in Greater Sydney marks a milestone in the delivery of planning reforms that place greater emphasis on strategic planning.

In our role as the Commission's Assurance Panel, we appreciate that these first LSPSs across Greater Sydney are foundational in strengthening how growth and change will be managed into the future. We note your draft LSPS has been prepared in response to the provisions of Section 3.9 of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

We confirm that the Commission supports Blue Mountains City Council's draft Local Strategic Planning Statement (March 2020) as being consistent with the Greater Sydney Region Plan and Western City District Plan under Section 3.9(3A) of the EP&A Act.

Our decision on consistency reflects the work already undertaken informing your first LSPS. It also reflects that work is still in progress (including the Local Housing Strategy, Priority Infrastructure Plan and updated Planning Study for Employment Lands) which will further support the LSPS and inform future updates.

The Commission's support is based, in part, on Council's intent to deliver the Western City District Plan as set out in the Local Strategic Planning Statement.

In this context, the Commission's expectation is that Council will undertake this program of work to implement the LSPS and has, at **Attachment A**, included Advisory Notes to assist Council. These Advisory Notes have regard to:

- the interrelationship of the LSPS, housing targets and the Local Housing Strategy for Blue Mountains City Council;
- updates to population projections during the preparation of the LSPS;



- Future Transport 2056's city-shaping and city-serving transport infrastructure;
- interdependencies with State agency programs and policies;
- key initiatives that relate to resilience planning; and
- Council-led initiatives identified for further investigation.

It is further noted that Council may need to update the LSPS as key supporting studies, including the Local Housing Strategy, are finalised.

In conclusion, we acknowledge the significant amount of work that Council has undertaken to develop the LSPS. We particularly recognise Council's effort in the context of the recent bushfires which have had a devastating impact on local communities and have required Council to focus on recovery. Please pass on our thanks to all the members of your team who have assisted in achieving this significant milestone for Blue Mountains City Council. We look forward to continuing our work together creating a more liveable, productive and sustainable Greater Sydney.

With the benefit of this Letter of Support, it is now up to Council to determine whether it will make the draft LSPS (March 2020). Please note that no further amendments may be made to the LSPS prior to it being made (unless a further Letter of Support is obtained from the Commission).

Please be advised that once the LSPS is published on the NSW ePlanning Portal, the LSPS Tracker on the Commission's website will be updated to include this Letter of Support. Should you have any questions on the making of your LSPS, please contact Catherine Van Laeren, A/Executive Director, Central River City and Western Parkland City, Place, Design and Public Spaces, Department of Planning, Industry and Environment on (02) 9860 1520 or Catherine.VanLaeren@planning.nsw.gov.au.

Yours sincerely,

Geoff Roberts AM
Deputy Chief Commissioner
Chair of Assurance Panel

Elizabeth Dibbs
Western City District Commissioner
Assurance Panel Member
Commission Delegate

18 March 2020

cc. Jim Betts, Secretary, Department of Planning, Industry and Environment
Elizabeth Mildwater, Deputy Secretary, Transport for NSW



Anthony Manning, Chief Executive, School Infrastructure NSW
Nigel Lyons, Deputy Secretary, NSW Ministry of Health

Attachment A

Advisory Notes on implementation of Blue Mountains City Council draft Local Strategic Planning Statement:

These Advisory Notes highlight key considerations to support Council in the implementation of the first LSPS.

Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
Infrastructure and Collaboration	
1. State-led transport investigations and projects <i>Planning Priority W1, Action 3 seeks to align forecast growth with infrastructure.</i>	<ul style="list-style-type: none"> Continue to consult with Transport for NSW (TfNSW) on planning for city-shaping & city-serving transport initiatives in Future Transport 2056¹ including: <ul style="list-style-type: none"> 0-10 year committed initiatives in progress²: Upgrade to Blue Mountains Line, Bells Line of Road Corridor Upgrade; and 20+ years investigation initiatives: Bells Lines of Road – Castlereagh Connection.
2. Council-led transport initiatives <i>Planning Priority W1, seeks to plan for a city supported by infrastructure.</i>	<ul style="list-style-type: none"> Note: The draft SPS includes Council-led transport infrastructure initiatives. These initiatives will require further investigation to determine alignment with TfNSW's strategic planning priorities. These include: <ul style="list-style-type: none"> Bus layovers, transport hubs, satellite parking including train stations; Advocating alternatives for regional road freight and design solutions to mitigate impacts and leverage benefits of Great Western Highway upgrades; Improving access to Katoomba Town Centre;

¹ Source: <https://future.transport.nsw.gov.au/plans/greater-sydney-services-and-infrastructure-plan/service-and-infrastructure-initiatives>

² Source: <https://future.transport.nsw.gov.au/delivering-future-transport-2056>



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
	<ul style="list-style-type: none"> Improving traffic movement and safety at the intersection of Hawkesbury Road and the Great Western Highway at Springwood; and Seeking additional and improved train services.
3. Shared use agreements <i>Planning Priority W3, Action 10 seeks to optimise the use of available public land for social infrastructure.</i>	<ul style="list-style-type: none"> Continue to work with the Department of Education and Office of Sport regarding potential shared/joint use of facilities.
Liveability	
4. Local Housing Strategy – Housing analysis <i>Planning Priority W5, Action 17 requires councils to prepare Local Housing Strategies.</i> <i>Planning Priority W5, Action 18 requires councils to prepare Affordable Rental Housing Target Schemes following the development of implementation arrangements.</i>	<ul style="list-style-type: none"> Note: The NSW Government's Local Housing Strategy Guideline³ require Council's Local Housing Strategy to be approved by the Department of Planning, Industry and Environment (DPIE). As set out in the Local Housing Strategy Guideline⁴, the strategy is to include an analysis of changing demographics, housing density and housing market demand to confirm take-up rates and proposed staged approach. Note: The Local Housing Strategy should be informed by the NSW Government's Guideline for Developing an Affordable Housing Contribution Scheme⁵. Continue to work with other councils in the Western Sydney Planning Partnership to assess options and the viability of affordable rental housing as part of the development of an Affordable Housing Strategy and Affordable Housing Contribution Scheme.
5. Local Housing Strategy – 6-10 year housing target	<ul style="list-style-type: none"> As set out in Action 4 of the Greater Sydney Region Plan, Council's 6-10 year housing target is to inform

³ Source: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Local-Housing-Strategy-Guideline-and-Template.pdf>

⁴ Source: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Local-Housing-Strategy-Guideline-and-Template.pdf>

⁵ Source: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/-/media/C6F1D0F0359C4AB7A28C90BE7DEEE636.ashx>



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
<p><i>Planning Priority W5, Action 17(b) requires Local Housing Strategies to address the delivery of 6-10 year (when agreed) housing supply targets for each local government area.</i></p>	<p>the development of updated local environmental plans (LEPs) and housing strategies.</p> <ul style="list-style-type: none"> The Commission notes: <ul style="list-style-type: none"> Council's housing analysis indicates a 6-10 year target for the period 2021-2026 of 550 dwellings⁶. DPIE monitoring⁷ shows the current pipeline for the period 2019/20 to 2023/24 is 550 dwellings. In this context, Council is to show how it can meet an indicative draft range for 6-10 year housing targets for the period 2021/22 to 2025/26 of 550 to 600 dwellings as part of its Local Housing Strategy and relevant LEP updates. Testing this indicative range is to include a preliminary assessment of any relevant NSW Government investment decisions in consultation with State agencies. Where relevant data is available, councils are to identify the contribution of non-standard dwellings⁸ (seniors housing, boarding houses and secondary dwellings) in relation to this indicative range. Note: The NSW Government's strategic documents outline the direction for planning land use, service and infrastructure delivery across NSW. Population projections⁹ are subject to review over time and will

⁶ Source: Blue Mountains City Council draft Local Strategic Planning Statement March 2020, p80

⁷ Source: <https://www.planning.nsw.gov.au/Research-and-Demography/Sydney-Housing-Supply-Forecast/Forecast-data>

⁸ Source: Standard dwellings relate to those monitored via DPIE's housing monitor (i.e. Sydney Water connections) and Non-standard dwellings are those delivered under housing related SEPPs such as seniors, boarding houses and affordable rental housing (secondary dwellings). For more information refer to: <https://www.planning.nsw.gov.au/Research-and-Demography/Sydney-Housing-Supply-Forecast/Other-forms-of-housing>

⁹ Source: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/Research-and-demography/Population-projections/2019-Blue-Mountains.pdf>



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
	be managed through updates to the Region and district plans.
6. Local Character <i>Planning Priority W6, Action 19 requires recognition and celebration of the character of a place and its people throughout planning, design, development and management of the delivery of great places.</i>	<ul style="list-style-type: none"> Note: In identifying local character and/or desired future character, Council should have reference to the NSW Government's Local Character and Place Guideline (2019) and Government Architect NSW's Better Placed: An integrated design policy for the built environment of New South Wales (2017). Consult with DPIE on the approach to implementing local character.
7. Heritage <i>Planning Priority W6, Action 21 requires councils to identify, conserve and enhance environmental heritage.</i>	<ul style="list-style-type: none"> Continue to work with DPIE and Heritage NSW to ensure a strategic approach is taken to environmental heritage including Aboriginal cultural heritage in implementing the LSPS and developing LSPS updates.
8. Local contributions <i>Planning Priority W3, Action 9 requires councils to deliver social infrastructure that reflects the needs of the community now and in the future.</i>	<ul style="list-style-type: none"> Consult with DPIE regarding local contribution rates and the essential works list.
9. Place-based planning for local centres <i>Planning Priority W6, Action 19 requires place-based planning to support the role of centres as a focus for connected neighbourhoods.</i>	<ul style="list-style-type: none"> Consult with DPIE on place-based planning for local centres, including key town centres which should provide indicative locations for future housing. Place-based planning should have regard to findings of the Local Housing Strategy.
Productivity	
10. Freight transport <i>Planning Priority W7, Action 29 requires councils to optimise the efficiency and effectiveness of the freight handling network.</i>	<ul style="list-style-type: none"> Consult with TfNSW on approaches to managing freight movements, including local urban freight movements.
11. Strategic centres <i>Planning Priority W11, Action 56 requires councils to provide access to jobs, goods and services in centres; Action 58</i>	<ul style="list-style-type: none"> Confirm with DPIE if Council's Katoomba Employment Study (2019) requires approval to inform LEP updates.



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
<p><i>requires councils to prioritise strategic land use and infrastructure plans for growing centres. Action 62 requires Blue Mountains Council to strengthen Katoomba strategic centre.</i></p>	<ul style="list-style-type: none"> Confirm with DPIE if Council's Katoomba Master Plan requires approval to inform LEP updates.
Sustainability	
<p>12. Rural lands strategy</p> <p><i>Planning Priority W17 requires councils to maintain or enhance the values of the Metropolitan Rural Area using place-based planning to deliver targeted environmental, social and economic outcomes (Action 78) and limit urban development to within the Urban Area (Action 79).</i></p>	<ul style="list-style-type: none"> Collaborate with adjoining Councils to consider supporting the growth of the agribusiness sector as part of any future place-based planning for rural areas within the Blue Mountains.
<p>13. Open space strategy</p> <p><i>Planning Priority W18, Action 80 requires councils to maximise the use of existing open space and protect, enhance and expand open space.</i></p>	<ul style="list-style-type: none"> Consider Council's contribution to the Premier's Priority to 'Increase the proportion of homes in urban areas within 10 minutes' walk of quality green, open and public space by 10 per cent by 2023'. Confirm with DPIE if Council's Open Space and Recreation Strategy (2019) requires approval to inform LEP updates.
<p>14. BASIX</p> <p><i>Planning Priority W19 requires councils to reduce carbon emissions and manage energy, water and waste efficiently.</i></p>	<ul style="list-style-type: none"> Consult with DPIE regarding changes sought to BASIX standards.
<p>15. Resilience to natural and urban hazards</p> <p><i>Planning Priority W20 requires councils to respond to the impacts of climate change (Action 87) and limit the intensification of development in areas most exposed to hazards (Action 88).</i></p>	<ul style="list-style-type: none"> Collaborate with the Greater Sydney Commission, other relevant state agencies and neighbouring councils to strengthen approaches to resilience through the City Disaster Recovery Plan Consider the impacts of flooding in the Hawkesbury-Nepean Valley on infrastructure and communities in



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
	the Blue Mountains as part of the City Disaster Recovery Plan and other relevant work on resilience
<p>16. Flooding and bushfire</p> <p><i>Planning Priority W20 requires councils to adapt to the impacts of urban and natural hazards and climate change</i></p> <p><i>Planning Priority W20 Action 90 requires councils to respond to the direction for managing flood risk in the Hawkesbury-Nepean Valley as set out in Resilient Valley, Resilient Communities – Hawkesbury-Nepean Valley Flood Risk Management Strategy.</i></p>	<ul style="list-style-type: none"> Consult with DPIE and State agencies to prepare and manage flood and fire risk, including when managing flood risk in the Hawkesbury-Nepean Valley¹⁰ and preparing guidance on land use limitations to reflect flood risk.
Implementation	
<p>18. Planning framework</p> <p><i>Section 6 Implementation, Figure 30.</i></p>	<ul style="list-style-type: none"> Notwithstanding the content of the LSPS, Ministerial Directions under Section 9.1 of the EP&A Act and State Environmental Planning Policies continue to apply to the LGA.
<p>19. Updates to LSPS</p> <p><i>Planning Priority W21, Action 91 requires councils to prepare local strategic planning statements informed by local strategic planning.</i></p>	<ul style="list-style-type: none"> Note: The LSPS includes a commitment to commence a review of the LSPS in 2024, and then again every four years to align with the review period for Council's community strategic plan¹¹. As set out in the LSPS Guidelines, revisions to the LSPS may be required in response to significant changes in the LGA such as announcements on centres revitalisation, new infrastructure investment and employment opportunities, significant changes in projected population growth or changes to the relevant higher order strategic plan. Update the LSPS when key supporting studies including the Local Housing Strategy are completed, noting that the Local Housing Strategy should be approved by DPIE.

¹⁰ Source: Western City District Plan, p.167

¹¹ Source: Blue Mountains draft Local Strategic Planning Statement, p.133



Western City District Plan Themes/Priorities/Actions	Considerations for implementation of the LSPS
<p>20. Monitoring and review – Implementation</p> <p><i>Planning Priority W21, Action 91 LEP Review and Section 3.8 (4a) EP&A Act LEP Updates</i></p>	<ul style="list-style-type: none"> Progress on the implementation of the District Plan will be reviewed and monitored with a focus on actions that support LEP Updates.
<p>21. Monitoring and review – Performance indicators</p> <p><i>Planning Priority W22, Action 92 requires the development of performance indicators in consultation with state agencies and councils that measure the 10 Directions to inform inter-agency, State and local government decision-making.</i></p>	<ul style="list-style-type: none"> Council is encouraged to apply the performance indicators in <i>The Pulse of Greater Sydney</i>, which are available at LGA level¹².

¹² Source: <https://www.greater.sydney/pulse-of-greater-sydney>