



IRF22/3098

Plan finalisation report – PP-2021-4886

Blue Mountains Local Environmental Plan Amendment (Complying Development) 2022, previously referred to as Blue Mountains Local Environmental Plan 2015 - Amendments No 13 and 13A.

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Introduction.....	2
1.1	Overview.....	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	2
1.1.3	Purpose of plan.....	3
1.1.4	State electorate and local member.....	4
2	Gateway determination and alterations	4
3	Public exhibition and post exhibition changes.....	4
3.1	Submissions during exhibition.....	5
3.1.1	Submissions supporting the proposal	5
3.1.2	Submissions objecting to the proposal	5
3.2	Advice from agencies.....	5
3.3	Post-exhibition changes.....	6
4	Department’s Assessment.....	6
4.1	Detailed Assessment	7
5	Post assessment consultation.....	8
6	Recommendation.....	9
	Attachments	10

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Blue Mountains Local Environmental Plan Amendment (Complying Development) 2022).

(Attachment LEP)

The planning proposal seeks to make a current variation a permanent amendment and align the application of various controls of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP)* - Part 3B Low Rise Housing Diversity Code (Low Rise Code) with Blue Mountains LEP 2015. This is proposed by amending Schedule 3 *Complying development codes - variations* of the SEPP.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) is applicable LGA wide
Type	LGA wide
Council / LGA	Blue Mountains City Council
LGA	Blue Mountains

The planning proposal applies to land identified on the Land Application Map under the Blue Mountains LEP 2015 (Figure 1 following). The planning proposal does not apply to several areas in the Blue Mountains LGA which are currently deferred from the Blue Mountains LEP 2015 and are subject to Blue Mountains LEP 2005 and Blue Mountains LEP 1991.

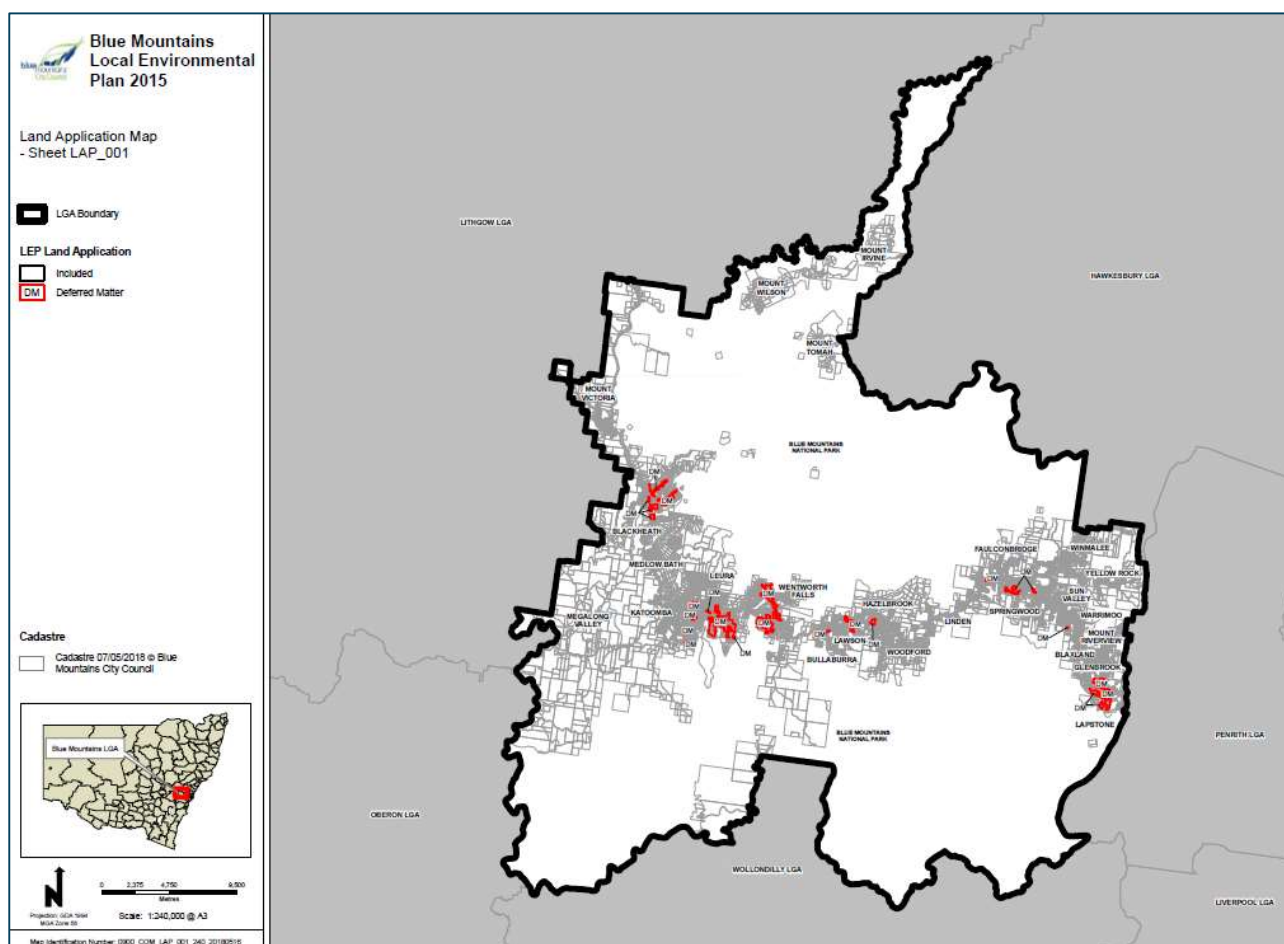


Figure 1 Blue Mountains Land Application Map (source: NSW Legislation website)

1.1.3 Purpose of plan

The planning proposal (**Attachment A**) contains an objective and intended outcomes that adequately explain the intent of the proposal.

The intent is to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 in the following manner:

1. Amend Schedule 3, Column 1 'Land to which variation applies' in the City of Blue Mountains to also include R1 General Residential and R3 Medium Density Residential.
2. Make the current City of Blue Mountains variation to SEPP clause 3B.10 Floor Space Ratio in Schedule 3 permanent by removing the note *"This variation to the Low Rise Housing Diversity Code ceases to have effect at the end of 2 October 2023"*.
3. Make the current City of Blue Mountains variation to SEPP clause 3B.23A Floor space ratio in Schedule 3 permanent by removing the note *"This variation to the Low Rise Housing Diversity Code ceases to have effect at the end of 2 October 2023"*.
4. Introduce a new Schedule 3 variation which has the effect of excluding Blue Mountains development from the SEPP clause 3B.35 Gross Floor Area (GFA) controls and defaulting to the Blue Mountains LEP 2015 Floor Space Ratio (FSR) controls. This variation is for multi dwelling housing (where permitted) only.
5. Amend SEPP clause 3B.15 *Minimum landscape area* so that the following applies:
 - a. At least 40% of the lot will comprise pervious area.
 - b. In this clause pervious area means any part of a site on which water infiltrates into the subsoil, excluding any area of land used as a driveway or any other hard surface (other than rainwater tanks, unroofed areas of spaced decking and swimming pools).

6. Amend clause 3B.27 *Minimum landscaped area* controls by applying the following:
 - a. At least 40% of the lot will comprise pervious area.
 - b. In this clause pervious area means any part of a site on which water infiltrates into the subsoil, excluding any area of land used as a driveway or any other hard surface (other than rainwater tanks, unroofed areas of spaced decking and swimming pools).
7. Amend clause 3B.40 *Minimum landscaped area* by applying the following:
 - a. At least 40% of the lot will comprise pervious area.
 - b. In this clause pervious area means any part of a site on which water infiltrates into the subsoil, excluding any area of land used as a driveway or any other hard surface (other than rainwater tanks, unroofed areas of spaced decking and swimming pools)

1.1.4 State electorate and local member

The site falls within the Blue Mountains state electorate. Trish Doyle MP is the State Member.

The site falls within the Macquarie federal electorate. Susan Raye Templeman MP is the Federal Member.

To the team's knowledge, Ms Templeman has not made any written representations regarding the proposal.

Ms Doyle has made representations on behalf of the Blue Mountains Conservation Society, and Council, concerning a stormwater management proposed amendment - which was removed from the proposal (MDPE22/2430 refers). Ms Doyle, however, has not objected to the subject plan being made.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 28/10/2021 (**Attachment B1**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 23/11/2021 (**Attachment B2**), specifying that the planning proposal must be exhibited within 6 months from the date of the Gateway determination, instead of 3 months. A further alteration was issued on 11 May 2022 (Attachment B3). Finalisation is required by 20 December 2022.

It was conditioned that prior to public exhibition, the proposal was to be amended to seek local variations to the State Environmental Planning Policy (Exempt and Complying Codes) 2008, as opposed to an exemption from the Code (**Attachment B1** - condition 1) and required that the planning proposal be referred to the Policy Branch of the Department of Planning and Environment (**Attachment B1** - condition 2).

Review of Council's website shows that the updated planning proposal was exhibited, satisfying condition 1.

In consultation with Council, the Department's Metro West Team consulted with the Policy Branch during the assessment, satisfying Gateway condition 2.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 29/06/2022 to 6/08/2022, as required by section 29 of the *Local Government Act 1993*.

Council received a total of four submissions, comprising three from the community and one from a State agency.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

Council received three (3) submissions during the exhibition period and one (1) late submission. All submissions were considered by Council. Two were from community members, one from a community organisation, and one from a State agency (Extract from Council report at **Attachment F**).

Of the four submissions, one submission objected to the amendment, while three are written in support, with one requesting further strengthening of controls beyond those proposed.

3.1.2 Submissions objecting to and/or raising issues about the proposal

The submission in objection suggested that the amendment reduces housing opportunity, noting there is a need for more housing.

Comments - Objection made during exhibition

Council's comments to the objection were:

- Council acknowledged that housing in the Blue Mountains is critical, particularly in relation to affordable housing and separate work continues to implement the actions of Council's Local Housing Strategy (LHS) and respond to the current housing affordability crisis.
- Council further responded that the exclusions sought to the Codes SEPP are not sought to hinder permissibility, but instead - to align the Low Density Code with local provisions that are better adapted to dealing with urban development abutting national park and impacting upon Sydney's water supply.

Following exhibition, the Department received an objection, as discussed below.

Comments – Objection received by the Department

The objection asserted that the proposal is not informed by current research and the proposal does not beneficially provide for the community, the environment or local character.

The objection was discussed with Council officers. The Department notes that Council's Local Strategic Statement and its Local Housing Strategy, together with other informing documents including the Blue Mountains Character Statement, are research/evidenced based planning documents that inform planning considerations.

The objection also cites a typographical error with regard to a clause reference in the original proposal, since corrected post exhibition, and reported in the publicly accessible post-exhibition Council report.

Consequently, with the exception of amending the typographical error, no changes are proposed as a result of the submissions objecting to this proposal.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the Policy Branch of the Department of Planning to inform amendments to the proposal, prior to community consultation. The determination did not require any other agency consultation.

In consultation with council officers, the Department's Director of Metro West, consulted with the policy branch, satisfying the condition.

The Department notes that Council received a submission from WaterNSW, which stated that it has an interest in the proposal as it potentially improves stormwater management and water outcomes for the Sydney Drinking Water.

WaterNSW has advised it will be approaching the Department of Planning as a separate matter to discuss the Codes SEPP and its relationship to Sydney Drinking Water Catchment requirements of the Biodiversity and Conservation SEPP.

The Department considers Council has adequately addressed the consultation condition of the determination.

3.3 Post-exhibition changes

Following exhibition, a number of administrative changes were made to the draft amendment. These changes corrected an error in the naming convention on page 5 from clause 3B.22B to clause 3B.23A and updated Ministerial Directions from page 11-19 (**Attachment A**) to reflect legislative changes (i.e., re-numbering and re-ordering), post 1 March 2022.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B1 to B3**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, District Plan and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As with the planning proposal submitted at Gateway timing, the post exhibition planning proposal submitted to the Department for finalisation remains consistent with:

- the District Plan;
- Council's Local Strategic Planning Statement;
- all relevant Section 9.1 Directions; and
- all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

Note: where the proposal is inconsistent with this assessment, further analysis or reconsideration of any unresolved matters is, if necessary, addressed in Section 4.1

Table 2 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

	Consistent with Gateway determination report Assessment
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

Table 3 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Western City District Plan:

Planning Priority W12: Protecting and improving the health and enjoyment of the district's waterways: amendments to stormwater controls have been deferred to Blue Mountains draft Amendment No. 16. The amendments sought in Amendment 13A seek to reduce impermeable surface area by the amendment of the Codes SEPP Schedule 3 Minimum Landscape controls. By seeking to increase permeable area, the planning proposal will reduce the amount of run off into neighbouring areas. Subsequently, the planning proposal remains consistent with Priority W12.

Planning Priority W14: Protecting and enhancing bushland and biodiversity: the amendments to the Codes SEPP Schedule 3 (FSR, GFA and Minimum Landscaped Areas) seek to prioritise Blue Mountains local planning controls over the Codes SEPP controls. It is considered the local controls are more stringent at mitigating outcomes, which may affect the neighbouring national park. By seeking these strict controls to protect bushland, the planning proposal remains consistent with Priority W14.

Planning Priority W5: Providing housing supply, choice and affordability, with access to jobs, services and public transport: The amendments sought in the post exhibition amendment 13A seek to better control development and do not limit housing supply or diversity.

Local Planning Panel (LPP) recommendation:

On 13 December 2021, the LPP provided the following advice:

That Council continue to press the Department of Planning, Industry and Environment and the Minister for Planning and Public Spaces in the strongest possible terms that exemption from the low rise code is the most appropriate solution in order to maintain the quality of the world heritage region of the Blue Mountains into the long term future.

Depending on the outcome of the representations that Council consider(s) the alternative put by the Department of Planning, Industry and Environment in the Gateway determination, ensuring that the strictest possible controls for local variations are incorporated into the low rise housing diversity code of State Environmental Planning Policy (exempt and complying codes) 2008 to ensure preservation of the Blue Mountains World Heritage region into the long term future.

Council has acted consistently with the advice provided by the LLP.

Section 9.1 Ministerial Directions:

The Gateway assessment report indicated that while the following directions were relevant, the proposal was not inconsistent with these directions, as follows:

3.1 Residential Zones:

Although Council's controls are more restrictive, the planning proposal is consistent with this Direction as it does not contain any provisions that will reduce the permissibility of housing opportunities or residential density on residential zoned land.

6.3 Site Specific Provisions:

As the proposal seeks to override less site specific Code planning controls and impose more stringent controls, it may be seen as technically being inconsistent with the Direction. The proposal, however, is only seeking to have existing LEP controls apply and is not seeking to insert any new site specific provisions.

To clarify, the now renumbered Direction – *1.4 Site Specific Provisions*, permits a planning proposal to amend another EPI to 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.

While the planning proposal does not introduce additional standards, it may be contended that the planning proposal is inconsistent in this regard. To satisfy process, it is recommended that the delegate of the Secretary confirms that any inconsistency is of minor significance.

State Environmental Planning Policy:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008:

The planning proposal seeks to apply amendments to Schedule 3 *Complying development codes – variations*. The amended Schedule 3 will result in FSR, GFA and Minimum Landscaped Area defaulting from Part 3B Low Rise Housing Diversity Code to the Blue Mountains LEP 2015 controls.

Site-specific assessment

Environmental Outcomes: The post exhibition planning proposal continues to ensure that environmental values are protected.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 4 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment I)</p> <p>Council confirmed on 7/12/2022 that it approved the draft and that the plan should be made (Attachment I)</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 5/12/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with Blue Mountains LSPS.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



12/12/2022

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12/12/2022

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Attachments

Attachment	Document
A	Planning Proposal
B1 to B3	Gateway determinations
F	Extract – Council Report
I	Council's agreement to proceed – S.3.36(1)
PC	Parliamentary Counsel's Opinion
LEP	Draft Instrument