

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
Draft Amendment 13A
(Low Rise Code local variations)



**Local Variations to the Code SEPP
Low Rise Housing Diversity Code**

POST GATEWAY DETERMINATION

Local variations to Low Rise Housing Diversity Code

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1.0	LPP advice	April 2021
1.1	Council endorsement	May 2021
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Prepared by Blue Mountains City Council

TABLE OF CONTENTS

PART 1 OBJECTIVES OR INTENDED OUTCOMES	2
PART 2 EXPLANATION OF PROVISIONS	5
PART 3 JUSTIFICATION	6
SECTION A - A NEED FOR THE PLANNING PROPOSAL	6
1. IS THE PLANNING PROPOSAL A RESULT OF ANY STRATEGIC STUDY OR REPORT?	6
2. IS THE PLANNING PROPOSAL THE BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES, OR IS THERE A BETTER WAY?	6
SECTION B - RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	7
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)?	7
4. IS THE PLANNING PROPOSAL CONSISTENT WITH THE LOCAL COUNCIL’S STRATEGY, OR OTHER LOCAL STRATEGIC PLAN?	8
5. IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES?	9
6. IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE DIRECTIONS BY THE MINISTER (PREVIOUS S.117) DIRECTIONS	11
SECTION C - ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	16
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?	16
8. ARE THERE ANY OTHER LIKELY ENVIRONMENTAL EFFECTS AS A RESULT OF THE PLANNING PROPOSAL AND HOW ARE THEY PROPOSED TO BE MANAGED?	16
9. HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY SOCIAL AND ECONOMIC EFFECTS?	16
SECTION D - STATE AND COMMONWEALTH INTERESTS	16
10. IS THERE ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PLANNING PROPOSAL?	16
11. WHAT ARE THE VIEWS OF STATE AND COMMONWEALTH PUBLIC AUTHORITIES CONSULTED IN ACCORDANCE WITH THE GATEWAY DETERMINATION?	16
PART 4 MAPPING	17
PART 5 COMMUNITY CONSULTATION	17
PART 6 PROJECT TIMELINE	17
PART 7 ATTACHMENTS	17

PART 1 OBJECTIVES OR INTENDED OUTCOMES

Overview

The objective of this planning proposal is to mitigate the impacts of the Low Rise Housing Diversity Code (Low Rise Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This was initially proposed to be achieved by excluding the Blue Mountains LGA from the application of the Low Rise Code.

In response to the Gateway Determination, this planning proposal has been modified to seek local variations in the Low Rise Code for the Blue Mountains LGA related to floor space, site coverage, and pervious area. Stormwater management and minimum lot size controls in the Low Rise Code remain an issue. However, proposed amendments to the Low Rise Code to address the matters were not supported by the Department and have been deferred for further negotiation as part of draft Amendment 16 to LEP 2015.

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 (then) Seniors SEPP to remove the applicability of Metropolitan Rural Areas. As a result, this planning proposal now seeks local variations to the Low Rise Housing Diversity Code which would go someone to addressing the potential impact from the Code.

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 substantial development (including medium density development) to be assessed as complying development, which has to meet weaker development standards than the existing local controls. The shortcomings and potential impacts resulting from the Low Rise Code are outlined below.

Impact on Residential Character

The Low Rise Code could potentially 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 (then) 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, local variations for the Blue Mountains LGA in the Low Rise Code are required to ensure that development is of an appropriate size and scale.

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).

The principal concern, which this planning proposal seeks to address, is that the Code allows development with greater site coverage and impermeable area than permitted under local provisions. This increases the volume of stormwater entering the system, increasing the volumes and velocity of water flowing into natural waterways in the World Heritage Area.

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. The fine-grained approach to stormwater management in the Blue Mountains is in stark contrast to the minimal consideration provided under the Code, which only requires that development be connected to a drainage system.

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. 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. It is intended to approve connection to a public drain, not the assessment or approval of stormwater management associated with a development.

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. 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.

Given that the Department of Planning has not supported local variations to the Low Rise Code to address the deficiencies in the stormwater management controls, this planning proposal is only able to seek local variations to site coverage and permeable areas controls. This will go some way to addressing the potential impacts in terms of volume of stormwater leaving a site, but not the quality of stormwater or the further reduction in stormwater volume through retention.

PART 2 EXPLANATION OF PROVISIONS

The original objective of this planning proposal was 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 sought to achieve this by excluding the application of the Low Rise Code to all land to which Blue Mountains LEP 2015 applies. This was proposed to be achieved by amending clause 1.9 Application of SEPPs to list the Low Rise Code in subclause (2), as a State environmental planning policies that does not apply to the land to which LEP applies.

The Gateway Determination for this amendment imposed the condition that local variations to the Low Rise Code are to be proposed in place of an exemption to Code. The intention of these local variation is to address the impacts of the Low Rise Code outlined in Section 1 of this planning proposal. Acknowledging that an exemption would still be the most appropriate recognition of the unique values of the Blue Mountains as a City in World Heritage Area, local variations to the Low Rise Code which address the following matter are proposed, detailed below.

- Floor space
- Site coverage and permeable area

It is proposed that these local variations be included in the Codes SEPP in Schedule 3 Complying development codes – variations. This schedule currently contains local variations for 14 Local Government Areas, covering matters including setbacks, floor space, specific site exclusions, and vehicle access requirements. It is noted that these variations apply to different Codes within the Code SEPP, including the Low Rise Code. The following proposed local variations are considered consistent with the existing approach to local variations evident in the Code SEPP. The final drafting of the proposed local variations is subject to consultation with the Department and Parliamentary Counsels Office.

Floor space

It is proposed that the current temporary floor space provisions in the Codes SEPP be made permanent and extended to all development types under the Low Rise Code.

The current local variations to the Code SEPP for the City of the Blue Mountains concerns clause 3B.10 & 3B.23A of that Code. The local variation replaces gross floor area controls with the floor space ratio controls under Blue Mountains LEP 2015, to dual occupancies and manor house. However, this variation is only in effect until 2 October 2023.

It is proposed that the current limitation of time on the application of this clause be removed and the provisions be permanently included. Additionally, it is proposed that this local variation is extended to also replace 3B.35 in division 4, covering multi-dwelling housing (terraces), with a requirement to meet Blue Mountains LEP 2015 floor space ratio controls.

Site coverage and permeable area

To address stormwater management, site coverage and permeable area, it is requested that local variations be made to the landscape development standards section of the Low Rise Code, to require the retention of a minimum pervious area. A local variation is proposed to the landscape development standards subdivision of each of the development type divisions under the Low Rise Code.

- 3B.15 (for dual occupancies)
- 3B.27 (for manor houses and dual occupancy)
- 3B.40 (for multi dwelling housing – terraces)

The wording of the proposed new subclause to be added through the local variation to the minimum landscape development standards would be as follows.

At least 40% of the lot will comprise pervious area.

*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).'*

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 previous mechanisms contained in the now superseded Seniors SEPP.

The environmental values of the Blue Mountains were recognised in the Western Sydney District Plan which classified the entire LGA as MRA. 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 then named 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 does not apply to land within LEP 2015 Draft Amendment 13A

² **Consistent:** This SEPP applies; LEP 2015 Draft Amendment 13A meets the relevant requirements and is in accordance with the SEPP.

³ **Justifiably Inconsistent:** This SEPP applies; LEP 2015 Draft Amendment 13A does not meet all the requirements or may be inconsistent with this SEPP as outlined following the table

State Environmental Planning Policies in force		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
SEPP	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	✓		
SEPP	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	✓		
SEPP	State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)	✓		
SEPP	State Environmental Planning Policy (Housing) 2021			
Chapter 2	Affordable housing		✓	
Chapter 3	Diverse housing	✓		
SEPP	State Environmental Planning Policy (Primary Production) 2021			
Chapter 2	Primary production and rural development	✓		
SEPP	State Environmental Planning Policy (Resources and Energy) 2021			
Chapter 2	Mining, petroleum production and extractive industries	✓		
SEPP	State Environmental Planning Policy (Resilience and Hazards) 2021			
Chapter 2	Coastal management	✓		
Chapter 3	Hazardous and offensive development	✓		
Chapter 4	Remediation of land		✓	
SEPP	State Environmental Planning Policy (Industry and Employment) 2021			
Chapter 2	Western Sydney employment area	✓		
Chapter 3	Advertising and signage	✓		
SEPP	State Environmental Planning Policy (Transport and Infrastructure) 2021			
Chapter 2	Infrastructure	✓		
Chapter 3	Educational establishments and childcare facilities	✓		
Chapter 4	Major infrastructure corridors	✓		
Chapter 5	Three ports – Port Botany, Port Kembla and Newcastle	✓		
SEPP	State Environmental Planning Policy (Biodiversity and Conservation) 2021			
Chapter 2	Vegetation in non-rural areas	✓		
Chapter 3	Koala habitat protection 2020		✓	
Chapter 4	Koala habitat protection 2021		✓	
Chapter 5	River Murray lands	✓		
Chapter 6	Bushland in urban areas	✓		
Chapter 7	Canal estate development	✓		
Chapter 8	Sydney drinking water catchment		✓	
Chapter 9	Hawkesbury-Nepean River		✓	
Chapter 10	Sydney Harbour Catchment	✓		
Chapter 11	Georges Rivers Catchment	✓		
Chapter 12	Willandra Lakes Region World Heritage Property	✓		
SEPP	State Environmental Planning Policy (Planning Systems) 2021			
Chapter 2	State and regional development	✓		
Chapter 3	Aboriginal land	✓		

<u>State Environmental Planning Policies in force</u>		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
Chapter 4	Concurrences and consents	✓		
SEPP	State Environmental Planning Policy (Precincts-Western Parkland City) 2021			
Chapter 2	State significant precincts	✓		
Chapter 3	Sydney region growth centre	✓		
Chapter 4	Western Sydney Aerotropolis		✓	
Chapter 5	Penrith Lakes Scheme	✓		
Chapter 6	St Marys	✓		
Chapter 7	Western Sydney Parklands	✓		
SEPP	State Environmental Planning Policy (Precincts-Central River City) 2021	✓		
SEPP	State Environmental Planning Policy (Precincts-Eastern Harbour City) 2021	✓		
SEPP	State Environmental Planning Policy (Precincts-Regional) 2021	✓		

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

SEPP (Housing) 2021

- This planning proposal is consistent with the 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 (Biodiversity and Conservation) 2021

- This planning proposal is consistent with Chapter 3 and Chapter 4 of the Biodiversity and Conservation 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*.
- This planning proposal is consistent with Chapter 8 of the Biodiversity and Conservation 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 policies.
- This planning proposal is consistent with Chapter 9 of the Biodiversity and Conservation SEPP. 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 policies.

SEPP (Resilience and Hazards) 2021

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

SEPP (Precincts-Western Parkland City) 2021

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

6. Is the planning proposal consistent with applicable Directions by the Minister for Planning

The following table provides a summary of the application and consistency with Directions by the Minister for Planning.

Note:

¹ **Not Relevant:** This direction does not apply to land within LEP 2015 Draft Amendment 13A.

² **Consistent:** This direction applies; LEP 2015 Draft Amendment 13A meets the relevant requirements and is in accordance with the direction.

³ **Justifiably Inconsistent:** This direction applies, but LEP 2015 Draft Amendment 13A does not meet all the requirements or may be inconsistent with this direction as outlined following the table.

Directions by the Minister for Planning - section 9.1(2)		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
Focus Area 1: PLANNING SYSTEMS				
1.1	Implementation of Regional Plans		✓	
1.2	Development of Aboriginal Land Council Land	✓		
1.3	Approval and Referral Requirements	✓		
1.4	Site Specific Provisions		✓	
Focus Area 2: DESIGN AND PLACE				
Focus Area 3: BIODIVERSITY AND CONSERVATION				
3.1	Conservation Zones	✓		
3.2	Heritage Conservation	✓		
3.3	Sydney Drinking Water Catchments		✓	
3.4	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	✓		
3.5	Recreation Vehicle Areas	✓		
3.6	Strategic Conservation Planning	✓		
Focus Area 4: RESILIENCE AND HAZARDS				
4.1	Flooding		✓	
4.2	Coastal Management	✓		
4.3	Planning for Bushfire Protection		✓	
4.4	Remediation of Contaminated Land	✓		
4.5	Acid Sulfate Soils	✓		
4.6	Mine Subsidence and Unstable Land		✓	
Focus Area 5: TRANSPORT AND INFRASTRUCTURE				
5.1	Integrating Land Use and Transport	✓		
5.2	Reserving Land for Public Purposes	✓		
5.3	Development Near Regulated Airports and Defence Airfields	✓		
5.4	Shooting Ranges	✓		
Focus Area 6: HOUSING				
6.1	Residential Zones		✓	
6.2	Caravan Parks and Manufactured Home Estates	✓		
Focus Area 7: INDUSTRY AND EMPLOYMENT				
7.1	Business and Industrial Zones	✓		
7.2	Reduction in non-hosted short-term rental accommodation period	✓		
7.3	Commercial and Retail Development along the Pacific Highway, North Coast	✓		
Focus Area 8: RESOURCES AND ENERGY				
8.1	Mining, Petroleum Production and Extractive Industries	✓		
Focus Area 9: PRIMARY PRODUCTION				
9.1	Rural Zones	✓		
9.2	Rural Lands	✓		
9.3	Oyster Aquaculture	✓		
9.4	Farmland of State and Regional Significance on the NSW Far North Coast	✓		

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

Direction 1.4 Site Specific Provisions

Objective

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

Application

This direction applies to all relevant planning authorities when preparing a planning proposal that will allow a particular development to be carried out.

Direction 1.4

(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development 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 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.*

(2) A planning proposal must not contain or refer to drawings that show details of the proposed development.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) 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 1.4 Site specific provisions.

Direction 1.10 Implementation of the Western Sydney Aerotropolis Plan

Objective

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.

Application

This direction applies when a relevant planning authority prepares a planning proposal for land in the Blacktown, Blue Mountains, Camden, Campbelltown, Fairfield, Liverpool, Penrith and Wollondilly local government areas that applies to land that is the subject of the chapter 4 of the State Environmental Planning Policy (Precincts- Western Parkland City) 2021.

Direction 1.10

(1) 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 and Environment.

Consistency

A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Planning Secretary (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).

Direction 3.3 Sydney Drinking Water Catchment

Objective

The objective of this direction is to protect water quality in the Sydney drinking water catchment.

Application

This direction applies when a relevant planning authority prepares a planning proposal for land in the following local government areas, that applies to land located within the Sydney drinking water catchment: Blue Mountains, Kiama, Sutherland, Campbelltown, Lithgow, Upper Lachlan, Cooma Monaro, Oberon, Wingecarribee, Eurobodalla, Palerang, Wollondilly, Goulburn Mulwaree, Shoalhaven Wollongong.

Direction 3.3 (1)

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.*

(2) 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 chapter 8 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, 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
Land reserved under the National Parks and Wildlife Act 1974	C1 National Parks and Nature Reserves
Land in the ownership or under the care, control and management of the Sydney Catchment Authority located above the full water supply level	C2 Environmental Conservation
Land below the full water supply level (including water storage at dams and weirs) and operational land at dams, weirs, pumping stations etc.	SP2 Infrastructure (and marked "Water Supply Systems" on the Land Zoning Map)

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 (1) 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 3.34 of the EP&A Act.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.

Note: In this direction: "Sydney drinking water catchment" has the same meaning as in chapter 8 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021. "Special Area" has the same meaning as in the Water NSW Act 2014. "Strategic Land and Water Capability Assessment" means the series of land use capability maps and GIS data of this title, prepared by the Sydney Catchment Authority and as provided to councils in June 2009. The maps resulted from the Sydney Catchment Authority's assessment of the physical capability of natural features of land and waterways to identify appropriate types and intensities of land use that will not adversely impact on water quality and catchment health.

Response

This planning proposal is consistent with Direction 3.3 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. Blue Mountains 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 4.1 Flooding

Objectives

The objectives of this direction are to:

- (a) 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) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.

Application

This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Direction 4.1

(1) A planning proposal must include provisions that give effect to and are consistent with:

- (a) the NSW Flood Prone Land Policy,
 - (b) the principles of the Floodplain Development Manual 2005,
 - (c) the Considering flooding in land use planning guideline 2021, and
 - (d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.
- (2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.
- (3) A planning proposal must not contain provisions that apply to the flood planning area which:
- (a) permit development in floodway areas,
 - (b) permit development that will result in significant flood impacts to other properties,
 - (c) permit development for the purposes of residential accommodation in high hazard areas, (d) permit a significant increase in the development and/or dwelling density of that land,

- (e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,
 - (f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,
 - (g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or
 - (h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event. Local Planning Directions NSW Department of Planning and Environment
- (4) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply 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 dwelling density of that land,
 - (d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,
 - (e) are likely to affect the safe occupation of and efficient evacuation of the lot, or
 - (f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.
- (5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.

Consistency

A planning proposal may be inconsistent with this direction only if the planning proposal authority can satisfy the Planning Secretary (or their nominee) that:

- (a) the planning proposal is in accordance with a floodplain risk management study or plan adopted by the relevant council in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or
- (b) where there is no council adopted floodplain risk management study or plan, the planning proposal is consistent with the flood study adopted by the council prepared in accordance with the principles of the Floodplain Development Manual 2005 or
- (c) the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authorities' requirements, or
- (d) the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority.

Note: In this direction:

- (a) "flood prone land" "flood storage" "floodway" and "high hazard" have the same meaning as in the Floodplain Development Manual 2005.
- (b) "flood planning level" "flood behaviour" and "flood planning area" has the same meaning as in the Considering flooding in land use planning guideline 2021.
- (c) Special flood considerations are outlined in the Considering flooding in land use planning guideline 2021 and an optional clause in the Standard Instrument (Local Environmental Plans) Order 2006.
- (d) Under the floodplain risk management process outlined in the NSW Government's Floodplain Development Manual 2005, councils may produce a flood study followed by a floodplain risk management study and floodplain risk management plan.

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 4.3 Planning for Bushfire Protection

Objectives

The objectives of this direction are to:

- (a) 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) encourage sound management of bush fire prone areas.

Application

This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land. This applies where the relevant planning authority is required to prepare a bush fire prone land map under section 10.3 of 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.

Direction 4.3

- (1) 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 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.
- (2) A planning proposal must: (a) have regard to Planning for Bushfire Protection 2019, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ).
- (3) 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 firefighting 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. Local Planning Directions NSW Department of Planning and Environment

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Response

This amendment acknowledges the significant bushfire risk present in the Blue Mountains. This draft amendment is consistent with Ministerial Direction 4.3 Planning for Bushfire Protection, and the Commissioner of the NSW RFS will be consulted as prescribed by the Gateway Determination.

Direction 6.1 Residential Zones

Objectives

The objectives of this direction are to:

- (a) encourage a variety and choice of housing types to provide for existing and future housing needs,
 - (b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
 - (c) minimise the impact of residential development on the environment and resource lands. **Application**
- This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary), or any other zone in which significant residential development is permitted or proposed to be permitted.

Direction 6.1

- (1) 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.
- (2) 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

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy approved by the Planning Secretary 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), 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 District Plan prepared by the Department of Planning and Environment 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 6.1 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.

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	Previously reported April 2021
Amended Planning Proposal reported to the Council	June 2022
Submission of planning proposal to DPIE for 'gateway review'	July 2022
Gateway determination issued	August 2022
RFS consultation required by Ministerial Direction 4.4	Sept-Oct 2022
Public exhibition	Oct-Nov 2022
Council review of submissions	November 2022
<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	December 2022
Draft Amendment to LEP 2015 to be made	January 2023

* 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
8	Gateway Determination	21/268630
9	Letter from the Department in response to amended proposal	22/133563