



IRF23/1015

Gateway determination report – PP-2023-513

Response to Low Rise Housing Diversity Code -
Minimum lot size controls

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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.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A - Planning Proposal - Amendment 16A - MLS controls for medium density
Attachment D – Letter to Council – January 2023
Attachment E – Council reference to LPP
Attachment F – Council minutes Feb 2023

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Blue Mountains
PPA	Blue Mountains City Council
NAME	Response to Low Rise Housing Diversity Code - Minimum lot size controls
NUMBER	PP-2023-513
LEP TO BE AMENDED	Blue Mountains Local Environmental Plan 2015
ADDRESS	All land within the Blue mountains Local Government Area (LGA) zoned under Blue Mountains LEP 2015 : <ul style="list-style-type: none"> • R1 General Residential; • R2 Low Density Residential; • R3 Medium Density Residential; • B2 Local Centre; and • IN2 Light Industrial
DESCRIPTION	R1, R2, R3, B2 and IN2 zoned land within Blue Mountains LGA
RECEIVED	9/03/2023
FILE NO.	IRF23/1015
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A**) contains objectives and intended outcomes which Council are seeking to implement in response to the Low Rise Housing Diversity Code.

The objectives of the planning proposal are to:

- Amend Minimum Lot Size for Dual Occupancies
- Introduce a Minimum Lot Size for Multi Dwelling Housing
- Remove Clause 4.1B (3) from Blue Mountains LEP 2015

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The primary intention of this planning proposal is to ensure outcomes resulting from the Low Rise Housing Diversity Code align with intended outcomes of the Blue Mountains Local Environmental Plan 2015. The planning proposal seeks to amend the Blue Mountains LEP 2015 by amending dual occupancy minimum lot size (MLS), introducing an MLS for multi-dwelling housing and removing Clause 4.1B(3) of the local environmental plan.

Amendments to Minimum Lot Size (MLS):

Table 3 Current and proposed controls

Minimum lot size	Current	Proposed
Dual Occupancies (attached) – in R1, R2, R3 zones	900m ²	1,000m ²
Dual Occupancies (detached) – in R1, R2, R3 zones	1,100m ²	1,000m ²
Multi dwelling housing and Manor Houses – in R1, R3, and B2 zones	Nil	1,300m ²

Removal of Clause 4.1B(3) from Blue Mountains LEP 2015:

The planning proposal also seeks to delete the following provision:

(3) Despite subclause (2), development consent may be granted to development on a lot with an area of at least 720 square metres in a zone specified in the table for the purpose of a dual occupancy (attached) if the development will include one dwelling with a gross floor area not exceeding 100 square metres.

1.4 Site description and surrounding area

The planning proposal applies to all land within the Blue Mountains LGA zoned:

- R1 General Residential;
- R2 Low Density Residential;
- R3 Medium Density Residential;
- B2 Local Centre; and
- IN2 Light Industrial.

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

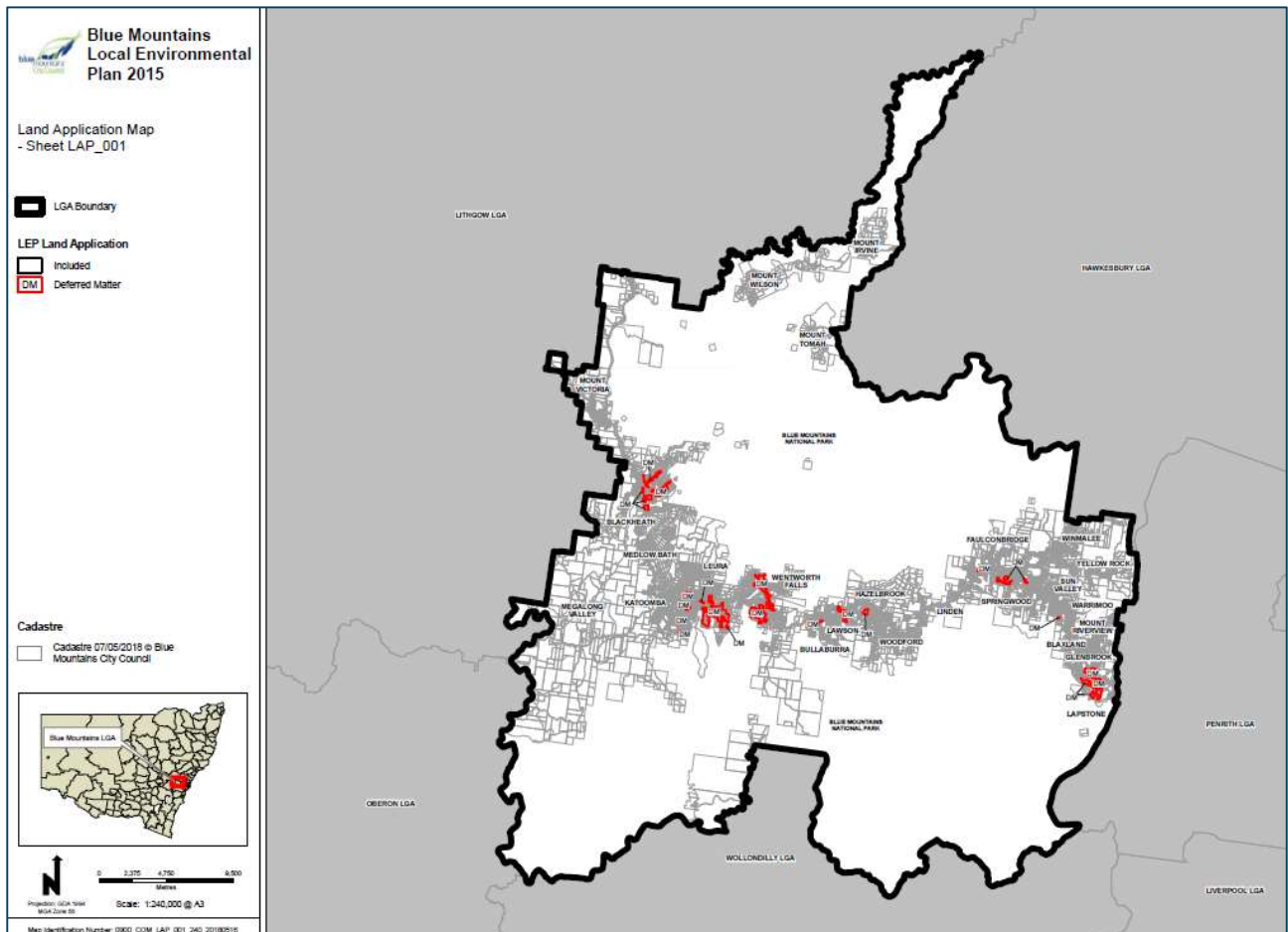


Figure 1 Blue Mountains Land Application Map (source: NSW Legislation website)

1.5 Mapping

The planning proposal does not seek to amend any maps in the Blue Mountains LEP.

1.6 Background

Implementation of the Low Rise Housing Diversity Code (Low Rise Code) within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) raised Council concerns regarding appropriate minimum lots sizes. Thus, changes to local planning provisions have been proposed to minimise the potential for housing development on small lots.

Council's concerns are based on the natural setting of the Blue Mountains; the fragility of the environment; and, the need to continue to minimise impacts from urban development on the surrounding National Park.

Previous planning proposals submitted by Council have included the intention to amend the Codes SEPP to address stormwater provisions. The Department has not supported this intention in the proposed form. The Department will continue to liaise with Council to determine an appropriate way forward.

1.6.1 Dual Occupancy Development

Dual occupancies are permitted with consent in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, B2 Local Centre and IN2 Light Industrial zones under the Blue Mountains LEP.

Dual occupancy is defined in the Blue Mountains LEP (and all standard instrument LEPs) as follows:

- *dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).*
- *dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other but does not include a secondary dwelling.*
- *dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.*

The Low Rise Code (cl. 3B.1(3)) allows dual occupancy development to be undertaken as complying development on R1, R2 and R3 zoned land (subject to compliance with other relevant provisions of the SEPP).

The Low Rise Code largely overrides the controls of the Blue Mountains LEP. However, the Low Rise Code (cl. 3B.8 and 3B.21) does allow for minimum lot size controls for dual occupancy specified in an LEP to apply in place of the default 400m² control in the Codes SEPP.

The Blue Mountains LEP currently prescribes differing minimum lot size requirements for attached and detached dual occupancies. The requirement is 900m² for attached dual occupancies and 1,100m² for detached dual occupancies.

1.6.2 Multi Dwelling Housing Development

Multi dwelling housing is permitted with consent in the R1 General Residential and R3 Medium Density Residential zones under the Blue Mountains LEP.

Multi dwelling housing is defined in the Blue Mountains LEP as:

- *multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*

The Low Rise Code (cl. 3B.1(3)) allows multi dwelling housing development to be undertaken as complying development on R1, R2 and R3 zoned land.

The Low Rise Code (cl. 3B.33) allows for minimum lot size controls for multi dwelling housing specified in an LEP to apply in place of the default 600m² control in the Code.

The Blue Mountains LEP currently has no minimum lot size controls for multi dwelling housing.

1.6.3 Manor House Development

Under the Low Rise Code (cl. 3B.1A) development for the purposes of manor house is permitted with consent on R1, R2 and R3 zoned land, if multi dwelling housing or residential flat buildings are permitted in the zone. In the Blue Mountains LEP, multi dwelling housing is permitting in the R1 and R3 zones.

Manor house is defined in the Codes SEPP as:

- *manor house means a residential flat building containing 3 or 4 dwellings, where—*
 - a) *each dwelling is attached to another dwelling by a common wall or floor, and*
 - b) *at least 1 dwelling is partially or wholly located above another dwelling, and*
 - c) *the building contains no more than 2 storeys (excluding any basement).*

The Low Rise Code (cl. 3B.21) allows for minimum lot size control for manor houses specified in an LEP to apply in place of the default 600m² control in the Codes SEPP.

The Blue Mountains LEP currently has no minimum lot size controls for manor houses.

2 Need for the planning proposal

The planning proposal states that it has been prepared specifically to implement Actions 1.3 and 5.7 of the 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

It is noted Action 1.3 relates to stormwater management that has been deferred from this proposal. Should a Gateway determination be issued, a condition will require the planning proposal to be updated to remove any reference to stormwater management controls, on page 5 of the proposal.

The planning proposal is considered the best and only means to achieve the proposal's intended objectives and outcomes.

3 Strategic assessment

3.1 Region and District Plan

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

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

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* (The Act). By giving effect to the District Plan, the proposal is also consistent with the Greater Sydney Commission's *Greater Sydney Regional Plan: A Metropolis of Three Cities*.

The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 4 District Plan assessment

District Plan Priorities	Justification
Planning Priority W5: Providing housing supply, choice and affordability with access to jobs, services and public transport	The proposal notes new housing is important to meet the needs of Greater Sydney. However, housing must be in the right place to meet the demand for different housing types, tenure, price points, preferred locations and design. The District Plan notes that Council is in the best position to determine which areas are best to accommodate medium density housing and how this will be delivered.

District Plan Priorities	Justification
W6 Creating and renewing great places and local centres, and respecting the District's heritage	The planning proposal is consistent with Planning Priority W6 as it seeks to protect local character of the LGA.
<p>Planning Priority W12: Protecting and improving the health and enjoyment of the District's waterways and Sustainability</p> <p>Planning Priority W14: Protecting and enhancing bushland and biodiversity</p>	This 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 by reducing edge effect impacts, such as stormwater runoff. The proposal seeks to achieve this by ensuring that medium density development can only occur on lots of sufficient size to allow appropriate stormwater management.
Planning Priority W20: Adapting to the impacts of urban and natural hazards and climate change	The District Plan notes that climate, vegetation, topography and pattern of development contribute significantly to hazard risk. Placing developments in hazardous areas or increasing the density of development in areas with limited evacuation options increases risk to people and property. The proposed amendments will ensure only the most suitable of sites are developed for the purpose of dual occupancies and multi dwelling housing and ensure sites can comply with asset protection zones and various other bushfire risk reduction measures.

3.2 Local

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

Table 5 Local strategic planning statement assessment

LSPS priorities	Justification
Action 1.3 Council will seek an exemption from the Low-Rise Code in State Environmental Planning Policy (Exempt and Complying Codes) 2008, to ensure local stormwater management controls are maintained and continue to protect the receiving environment of the Blue Mountains World Heritage National Park	<p>As noted in the section 1.6, Council has previously requested exemption from the Low Rise Code in respect of stormwater management controls.</p> <p>The basis for the exemption requests was based on the unique characteristics of the Blue Mountains LGA as a City within a World Heritage Area.</p> <p>Council is of the view that the Low Rise Code threatens to erode these defining features and poses a risk to the environmental values of the World Heritage Area through substantial intensification of residential development.</p>
Action 5.7 Council will seek an exemption from the Low-Rise 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	<p>Given the exemption requests have not been supported, this planning proposal aims to minimise the potential for incompatible development resulting from the Low Rise Code.</p> <p>It is noted Action 1.3 relates to stormwater management that has been deferred from this proposal.</p> <p>Should a Gateway determination be issued, a condition will require the proposal to be updated to remove any intended changes to stormwater management controls.</p>

3.3 Blue Mountains Local Housing Strategy

The Blue Mountains Local Housing Strategy (LHS) was prepared to inform future planning for housing in the Blue Mountains. It was developed in conjunction with Council's LSPS.

The proposal states it is consistent with the vision in the LHS: *'The Blue Mountains has a range of environmentally responsive, affordable and well-designed local housing options to meet diverse community needs'*.

Implementing the proposed amendments seeks to protect and conserve the natural environment, while providing adequate housing choice. The proposal does not seek to remove permissibility, but instead, increase the minimum lot size standard to encourage better environmental outcomes, while responding to housing affordability and housing mix needs.

The LHS forecasts 8 dual occupancies would be built in the 5 year period from 2016 to 2021. There is no forecast for any dual occupancies to be built between 2021 and 2026.

3.4 Local planning panel (LPP) recommendation

Council advises that a previous version of the planning proposal was referred to the Local Planning Panel on 20 September 2021.

As the objectives and intent of the revised planning proposal remain unchanged, Council consider that the advice received on the earlier version satisfies section 9.1 of the EPAA 1979 (**Attachment E**).

It is noted that the revised planning proposal was resolved to be submitted to the Department by Council on 28 February 2023 (**Attachment F**).

3.5 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.4 Site Specific Provisions	Consistent	<p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p>The proposal does not seek to introduce unnecessarily restrict site specific planning controls. The proposal has been prepared based on an analysis of how the Housing Code will potentially affect the area, other Council areas relevant controls, and past local planning frameworks.</p> <p>The proposal is consistent with the objectives of this Direction.</p>
Direction 3.3 Sydney Drinking Water Catchment	Consistent	<p>The objective of this direction is to provide for healthy catchments and protect water quality in the Sydney drinking water catchment.</p> <p>The proposal seeks to limit increased density on unsuitable lots, therefore protecting the environment including the Sydney Drinking Water Catchment.</p> <p>This proposal is consistent with the objectives of this Direction.</p>
Direction 6.1 Residential Zones	Consistent	<p>The objectives of this direction are to encourage housing variety and choice, make efficient use of existing infrastructure and services and minimise the impact on the environment.</p> <p>The proposal seeks to amend and introduce minimum lot size controls for dual occupancies, multi dwelling housing and manor houses.</p> <p>The proposal does not change the permissibility of any uses within the residential zones.</p> <p>The proposal is not considered to be inconsistent with the intent of the Direction.</p>

3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table (overleaf).

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Part 6.5 Sydney Drinking Water Catchment	Consistent	The proposal seeks to limit certain housing development to acceptable locations, which is consistent with the aims of the SEPP to protect the environment, including the Sydney Drinking Water Catchment.
SEPP 55: Remediation of Land	Promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	Not Applicable	The planning proposal does not seek changes to zoning or land use permissibility.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	This Policy aims to provide streamlined assessment processes for development that complies with specified development standards	Consistent	Previous iterations of this planning proposal sought exemption from the Codes SEPP. The current proposal does not seek such exemptions; however, it is expected that a future proposal will be submitted by Council seeking to provide requirements which will ensure that complying development will align with, to be specified, Blue Mountains stormwater controls.

4 Site-specific assessment

4.1 Environmental

4.1.1 Built Environment

Amending minimum lot size controls for dual occupancies

The proposal seeks to amend clause 4.1B to apply a single minimum lot size control of 1,000m² for dual occupancy (attached and detached), instead of differentiating between 900m² for attached dual occupancy and 1,100m² for detached dual occupancy.

Council is of the view that the lower minimum lot size could be utilised under the Low Rise Code, which could result in detached dual occupancy being erected on lots of 900m².

Council notes the proposed amendment will remove some existing permissibility for attached dual occupancy but will increase permissibility for detached dual occupancy. Council considers restricting where attached dual occupancy can occur under the Low Rise Code to be an acceptable compromise.

In regard to Clause 4.1B(3), Council has received legal advice that the clause may be used that is not intended. Clause 4.1B(3) states that:

‘despite subclause (2), development consent may be granted to development on a lot with an area of at least 720 square metres in a zone specified in the table for the purpose of a dual occupancy (attached) if the development will include one dwelling with a gross floor area not exceeding 100 square metres’.

Council is concerned that development for dual occupancy (attached or detached) could be approved on lots as small as 720m², as the Low Rise Code would not need to consider the 100m² gross floor area specification in clause 4.1B(3). Council is of the view this is contrary to the intent of the clause.

Since the introduction of the Blue Mountains LEP in 2015, the proposal notes Council has reviewed development applications and found, where clause 4.1B(3) has been used, it has resulted in poor outcomes.

Permissibility and controls for multi dwelling housing and manor houses are implemented through a combination of the relevant LEP and the Low Rise Code. Like dual occupancy, the Low Rise Code uses the minimum lot size controls specified in the relevant LEP to apply in place of the default 600m² minimum lot size.

The Blue Mountains LEP currently does not specify minimum lot sizes for multi dwelling housing or manor houses. Therefore, Council is proposing to introduce a minimum lot size as a means of preventing density growth in inappropriate locations.

Under the Low Rise Code, manor houses are permitted where either multi-dwelling housing or residential flat buildings are permitted under the LEP. This means a minimum lot size for multi dwelling housing and manor houses would only apply to R1 General Residential, R3 Medium Density Residential, and B2 Local Centre zones.

Given dual occupancy currently has a minimum lot size control of 900m² for dual occupancy (attached) and 1,100m² for dual occupancy (detached) in both R1 and R3 zones, Council considers it inconsistent to allow the minimum lot size of 600m² in the Low Rise Code to apply to multi dwelling housing and manor houses.

Council notes streetscape, traffic generation and on-site parking provisions are important considerations which are often difficult to address on smaller lots.

Council is proposing a minimum lot size of 1,300m² for multi dwelling housing and manor houses. To determine appropriate lot size, Council reviewed LEP controls in comparable LGAs, as follows (**Table 9**).

Table 9 - Minimum Lot Sizes comparison for Multi dwelling housing

Council	Environmental Planning Instrument	Minimum Lot Size
Camden Council	Camden LEP 2010 (4.1E)	1500m ²
Ku-ring-gai Council	Ku-ring-gai LEP 2015 (6.6)	1200m ²
Sutherland Shire Council	Sutherland Shire LEP 2015 (4.1E)	1200m ²
Penrith Council	Penrith LEP 2010 (4.1A)	1200m ²
Lithgow Council	Lithgow LEP 2014 (4.1A)	R1 – 600m ² - 800m ² R2 – 1200m ²

Council	Environmental Planning Instrument	Minimum Lot Size
Kiama Council	Kiama LEP 2011 (4.1E, 4.1F)	Density control: R2 - 300m ² per dwelling R3 - 200m ² per dwelling

The proposed minimum lot size of 1,300m² is substantially larger than the minimum lot size specified in the Low Rise Code. However, the proposed minimum lot size is generally consistent with controls in other LEPs in comparable LGAs. The application of the larger lot size may provide suitable design outcomes such as landscaping, solar access, cross ventilation and car parking.

4.1.2 Natural Environment

The Blue Mountains LGAs residential zones are developed, urban land. Dual occupancy and multi dwelling housing are permitted land uses in various residential zones. The intent of the proposal is to partly ensure reduced impact upon the adjoining natural environment.

4.2 Social and economic

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

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Preservation of local character and environmental values	<p>The planning proposal is considered appropriate to respond to the unique local character and environmental values of the area, while providing for complying development.</p> <p>The Department notes that Council's LHS (adopted on 31 March 2020), identified that Council can meet (or may exceed) its 5-year housing targets under existing LEP controls to cater for local growth.</p> <p>It is therefore anticipated that there would be negligible economic or housing delivery impacts as a result of this planning proposal, especially considering the current very low take up of complying development in the LGA.</p>

4.3 Infrastructure

This proposal seeks to make an amendment to restrict specific development types to larger, more suitable lots. Therefore, this planning proposal is not likely to increase the demand for public infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of at least 28 days.

The exhibition period proposed is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

Council has not nominated any public agencies to consult, and the Department considers that consultation with other public agencies is not required.

6 Timeframe

Council proposes a 8 month time frame to complete the LEP.

The Department recommends a time frame of 12 months following the date of the Gateway determination is reasonable as it is anticipated there may be objections during exhibition, requiring Council to address raised concerns.

A relevant condition is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

Given the planning proposal's complex background and relationship with the Codes SEPP, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

In accordance with the Department's letter to Council 17 January 2023 (**Attachment D**), the Department would welcome the submission of a planning proposal which excluded amendments to the stormwater controls.

The Department understands that Council will propose storm water complying development controls to allow certification under the Codes SEPP, in a separate planning proposal.

Council has submitted the revised planning proposal in accordance with the Department's position. The Department supports the planning proposal proceeding with conditions for the following reasons:

- it demonstrates strategic merit in being consistent with the Blue Mountains Local Housing Strategy;
- it is not inconsistent with the Western City District Plan and Council's local strategic plans;
- the proposed amendments will not have a significant impact on dwelling numbers in the LGA; and
- it will assist in guiding appropriate housing outcomes, while facilitating housing diversity in appropriate locations.

It is noted, however, that the proposal refers to the intention to address stormwater controls (refer to page 5 – **Attachment A**). As a determination condition, the proposal is to be updated to remove reference to proposed changes to stormwater management controls.

9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be updated to remove any reference to stormwater management changes to be achieved by this planning proposal;
2. The planning proposal should be made available for community consultation for a minimum of 28 calendar days.
3. The planning proposal must be exhibited 3 months from the date of the Gateway determination.
4. The planning proposal must be reported to council with a final recommendation 9 months from the date of the Gateway determination.
5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



22/5/23

Terry Doran
Manager, Metro West

Noted:



8 June 2023

Assessment officer

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