

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
Draft Amendment 16A



**Draft Blue Mountains LEP 2015 Amendment 16A:
(response to Low Rise Housing Diversity Code -
minimum lot size controls)**

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Prepared by Blue Mountains City Council

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Introduction

This planning proposal has been prepared to respond to the implementation of the Low Rise Housing Diversity Code (Low Rise Code) in SEPP (Exempt and Complying Development Codes) 2008 (the Codes SEPP). The Low Rise Code was introduced to ostensibly encourage more low rise medium density housing to be built in New South Wales and to provide better housing choice and affordability. The code allows one and two storey medium density homes in the forms of dual occupancies, manor houses and terraces to be built with a standardised set of development controls that do not align with local planning policy and controls.

The code also allows for this development to be undertaken as complying development, provided the application meets all relevant controls outlined in the Code. However, the Low Rise Code does not take into consideration any local planning controls except for minimum lot size, and even then, only in relation to dual occupancies and terrace houses, not for manor houses. This means that all other relevant local LEP and DCP controls are overridden and only those controls in the code apply. The implementation of the code in the Blue Mountains without amendments made to the current LEP could result in outcomes contrary to that which local planning controls intend to achieve. Therefore, Council is of the opinion that changes to the current Local Environmental Plan for the Blue Mountains need to be made to minimise undesirable outcomes as a result of the Low Rise Code.

This planning proposal seeks to amend clause 4.1B relating to the minimum lot size requirements for dual occupancies and multi dwelling housing in Blue Mountains Local Environmental Plan 2015 to limit undesirable outcomes under the Low Rise Code.

Prior to preparing this planning proposal, an exemption from the Low Rise Housing Diversity Code has been pursued since it was first proposed in 2018. This has occurred through ongoing discussions and correspondence between Council, the Minister for Planning and Public Spaces and the Department of Planning Industry and Environment.

An exemption from the Low Rise Code has not been forthcoming from the Department. However, Amendment 13A to LEP 2015 was recently published, which has amended the Low Rise Code to include local provisions for the Blue Mountains that refer to relevant LEP floor space controls, as well as setting a minimum pervious area. This goes some way to addressing Council's concerns, but the potential environmental impacts from the Low Rise Code remain. This planning proposal seeks to address one of the key outstanding concerns ensure only lots suitably large enough to accommodate development are able to do so through the Low Rise Code.

This Planning Proposal initially also proposed local variations to the Low Rise Code to improve stormwater management controls. This proposal was not supported by the Department of Planning and Infrastructure. This Planning Proposal has subsequently been amended to progress minimum lot size changes, whilst a solution to improving stormwater management controls will be pursued separately.

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The purpose of this planning proposal is to make an amendment to LEP 2015 to change minimum lots size controls for medium density housing. This amendment has been prepared to minimise potential undesirable outcomes in a City within a World Heritage Area as a result of the implementation of the Low Rise Housing Diversity Code through the strengthening of current LEP controls.

Blue Mountains LEP 2015 contains minimum lot size controls for specific development types. The following table summarises the current requirements for medium density development under LEP 2015 where the Low Rise Code applies:

	Zones	Minimum lot size
Dual Occupancies (attached)	R1 General Residential R2 Low Density Residential R3 Medium Density Residential	900m ²
Dual Occupancies (detached)	R1 General Residential R2 Low Density Residential R3 Medium Density Residential	1100m ²
Multi dwelling housing	R1 General Residential R3 Medium Density Residential	No MLS

Figure 1: Summary of existing Controls in Blue Mountains LEP 2015

Given the provisions in the Low Rise Code only refer to minimum lot size controls in an applicable LEP, it would be possible for the smallest minimum lot size control to be used regardless of whether other criteria in the LEP are met. This is because the Code does not refer to these criteria, only the lot size requirement.

This means that although LEP 2015 currently sets a minimum lot size control of 1100m² for dual occupancies if they are detached, a complying development under the Low Rise Code could utilise the 720m² minimum lot size for the development of a detached dual occupancy. This is because of clause 4.1B (3), which allows development of attached dual occupancies on lots as small as 720m² if one dwelling will not have a gross floor area exceeding 100m². The operation of the Code allows the minimum lot size under this clause to be used for any dual occupancy proposed under the Low Rise Code.

Minimum Lot Size of 1000m² for Dual Occupancies

To remove what is effectively a 'loop hole' for development to occur under the Low Rise Code on lots smaller than intended by the LEP, this planning proposal firstly seeks to introduce a single consistent minimum lot size of 1000m² for dual occupancies. Whilst this may remove the current ability to develop attached dual occupancies on some lots, it will expand where (the more commonly sought) detached dual occupancies could be built. This is a compromise between maintaining opportunities for housing diversity under local controls and minimising the impacts of the Low Rise Code.

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

This planning proposal also seeks to remove clause 4.1B (3) which allows development of attached dual occupancies on lots as small as 720m² if one dwelling will not have a gross floor area exceeding 100m². The proposed removal of the above clause aims to ensure that there is no avenue for dual occupancies (attached or detached) to be erected under the Code SEPP on smaller than intended lots when they do not have to meet the floor space restrictions stipulated in the LEP. The removal of this clause would protect the density, character, and amenity, particularly in R2 Low Density Residential areas which are typically characterised by singular residential dwellings.

The proposal to remove clause 4.1B(3) also responds to a review of the outcomes being achieved by the clause in development applications. This clause was primarily intended to provide a diverse housing

option that was a step up in scale from a secondary dwelling that could fit within a low-density residential setting. It was to facilitate a small additional dwelling being created attached to an existing dwelling, or a new development containing two modestly sized dwellings. However, in practice the clause is being used to create dual occupancies that are technically attached but are visually two separate dwellings where much more extensive development was envisaged. This is not achieving a housing diversity outcome. It is instead only creating a pathway for larger separate dwelling stock. In this context as the clause is not working as intended it is appropriate to remove it from LEP 2015.

Introduction of Minimum Lot Size for Multi Dwelling Housing

The other element to this planning proposal is to introduce a minimum lot size for multi dwelling housing and manor houses as there are currently no minimum lot size controls for these uses in the Blue Mountains LEP 2015. The absence of a minimum lot size control for these uses and the implementation of the Low Rise Housing Diversity Code could result in terrace houses on lots as small as 600m² and with a frontage of only 18m. This would be an undesirable outcome as it would be inconsistent with the objectives of the zones specified for the purpose of multi dwelling housing (R1 General Residential and R3 Medium Density Residential). The introduction of a minimum lot size for multi dwelling housing would ensure that only larger and therefore more suitable sites for this type of development would be utilised for this purpose.

Background

In draft LEP 2013, Council proposed a minimum lot size for multi dwelling housing and residential flat buildings. The proposed minimum lot size for these uses in all permissible zones (R1, R3 and B2) was 1300m². A minimum lot size (MLS) for these higher density residential development types was proposed as a strategy to clarify the minimum amount of land required (site area) for these types of developments to occur. The MLS would operate as the determinative control in the LEP and if a site were able to meet this control, it could then be assessed against other controls in the Development Control Plan, to determine whether the site was in fact appropriate for this type of development. This was to ensure higher density residential development only occurred on the most suitable of sites.

The above illustrates the concerns Council has had in relation to multi dwelling housing. The potential introduction of the Low Rise Code has only exacerbated these concerns and therefore changes to local planning provisions are proposed to minimise the potential for inappropriate development. The intended outcome of the proposed changes is to protect the environmental integrity, character, density patterns, and streetscape of a City within a World Heritage Area.

Current local controls appropriately limit the footprint of development to retain pervious areas, and to limit impacts on natural areas particularly through the management of stormwater quantity and quality. Stormwater management is a critical aspect of the management of the urban area of the Blue Mountains because the receiving environment for run off is the surrounding World Heritage National Park.

To override these long held local provisions within the sensitive and constrained Blue Mountains LGA is an unacceptable outcome within a World Heritage National Park. The importance of the unique natural setting of the Blue Mountains, the fragility of this environment, and the need to continue to minimise impacts from urban development on this surrounding receiving environment is central to the local planning priorities in *Blue Mountains 2040: Living Sustainably*, Council's Local Strategic Planning Statement adopted and made on 31 March 2020.

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

The Western City District Plan is clear that the Blue Mountains LGA is not planning for substantial growth and is not identified as a source of housing supply for greater Sydney. This is reflected in the classification of the whole of the Blue Mountains LGA as Metro Rural Area (MRA), requiring that only local housing needs be met, rather than the growth of greater Sydney.

The Local Strategic Planning Statement for the Blue Mountains is supported by the Blue Mountains Local Housing Strategy (LHS) 2020, adopted by Council on 31 March 2020 and approved by the

Department 10 May 2021. The LHS investigated in detail the current and future housing needs of the local community, including a survey of housing preference within the local community. It proposes a range of strategies to improve housing diversity within the City to meet these needs. These housing diversity strategies are also captured as actions in the Local Strategic Planning Statement and will result in future LEP amendments. The LHS demonstrated that the housing targets set by the Greater Sydney Commission could be met by existing planning controls, and the purpose of these future LEP amendments would provide additional housing diversity in areas suitable for increased densities, while also mitigating the impacts of urban runoff.

Through local place-based planning strategies and policies, the Blue Mountains can continue to meet the housing needs of the local community, both now and in the future, without the need to implement the Low Rise Code. However, as an exemption has not been granted, the most appropriate and effective way the LGA can be protected from the numerous consequences of the introduction of the code to this unique area is to strengthen the Local Environmental Plan controls.

This planning proposal seeks to amend the minimum lot size requirements for dual occupancies and multi dwelling housing in Blue Mountains Local Environmental Plan 2015 to limit undesirable outcomes under the Low Rise Code.

PART 2 EXPLANATION OF PROVISIONS

This planning proposal is seeking to make three (3) amendments to the Blue Mountains Local Environmental Plan 2015 as noted to amend clause 4.1B to:

- a. introduce a single minimum lot size for dual occupancies (attached and detached);
- b. remove clause 4.1B (3); and
- c. introduce minimum lot size controls for multi dwelling housing and manor houses

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.

Clause 4.1B is proposed to be amended as follows – edits shown in red.

4.1B Minimum lot sizes for dual occupancies, multi dwelling housing, and manor houses

- (1) *The objective of this clause is to achieve planned residential density in certain zones.*
- (2) *Development consent may be granted to development on a lot in a zone specified in the table to this clause for a purpose specified in the table if the area of the lot is equal to or greater than the area listed beside that zone in the table.*
- ~~(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.~~
- (4) *Land in a zone specified in the table may, with development consent, be subdivided for the purpose of a dual occupancy to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land if—*
 - (a) *development consent has been granted for the dual occupancy or a single development application proposes both the subdivision of the land and the erection of the dual occupancy on that land, and*
 - (b) *each dwelling will be erected on a separate lot.*

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R1 General Residential	900 1000 square metres
	Zone R2 Low Density Residential	900 1000 square metres
	Zone R3 Medium Density Residential	900 1000 square metres
	Zone B2 Local Centre	900 1000 square metres
	Zone IN2 Light Industrial	900 1000 square metres
Dual occupancy (detached)	Zone R1 General Residential	1,100 square metres
-	Zone R2 Low Density Residential	1,100 square metres
-	Zone R3 Medium Density Residential	1,100 square metres
-	Zone B2 Local Centre	1,100 square metres
-	Zone IN2 Light Industrial	1,100 square metres
Multi dwelling housing	Zone R1 General Residential	1300 square metres
	Zone R3 Medium Density Residential	1300 square metres
	Zone B2 Local Centre	1300 square metres
Manor houses	Zone R1 General Residential	1300 square metres
	Zone R3 Medium Density Residential	1300 square metres
	Zone B2 Local Centre	1300 square metres

Note: The proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.

Amending minimum lot size controls for dual occupancies

LEP 2015 currently prescribes differing minimum lot size requirements for attached and detached dual occupancies depending on the zone. The typical requirements are 900m² for attached dual occupancies and 1100m² for detached dual occupancies. This provides housing diversity opportunities through a sliding scale of density commensurate with lot size.

The Low Rise Housing Diversity Code (Low Rise Code) permits dual occupancies (attached or detached) on lots:

1. With a minimum lot area of 400m²; or
2. The minimum lot area specified for dual occupancies in the environmental planning instrument (Blue Mountains LEP) that applies to the land concerned.

The Housing Code stipulates where an LEP has a larger minimum lot size than that identified in the Code, it is the LEP minimum lot size which applies to the proposed development. A DCP control is not taken into consideration.

As Council currently has differing minimum lot size requirements for attached and detached dual occupancies, it is understood that the lower of the two figures could be utilised under the Code (without the need to have regard to a dual occupancy being attached or detached). This could therefore result in detached dual occupancies being erected on lots of 900m². Further, the lower Minimum Lot Size required under clause 4.1B(3) of 720m² could also be utilised.

Amendment to Clause 4.1B

To address this issue, it is proposed to modify the table in clause 4.1B to contain a single minimum lot size control of 1000m² for dual occupancy, making no differentiation between attached or detached, as this will ensure consistency and desirable outcomes for this type of development in the Blue Mountains Local Government Area.

This proposed amendment will remove some existing permissibility for attached dual occupancies. However, it will increase permissibility for detached dual occupancies (which are generally the more preferred development type). This is considered an acceptable trade-off to restrict where detached dual occupancies can occur under the Low Rise Code.

In addition to having to remove any differentiation between attached and detached dual occupancies to align with the operation of clauses in the Low Rise Code, there is major concern that the current clause 4.1B(3) provides a loophole for development to occur under the Code on lots much smaller than anticipated.

Removal of Clause 4.1B(3)

Council has received legal advice that if clause 4.1B(3) were to remain, it may be used in a way that it was 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 this clause will be used to allow development under the Code for any dual occupancies (attached or detached) on lots as small as 720m², as the code would not consider the gross floor area specifications noted later in the clause. Leaving this clause in the LEP could open up the opportunity for attached dual occupancies on lots significantly smaller than the 900m² MLS controls currently in place for attached dual occupancies. This result would be contrary to the intended effect of the clause, which was to allow lots between 720m² and 900m² to be developed, but only for an attached dual occupancy where one dwelling would not exceed 100m².

It is therefore proposed that this clause be removed from LEP 2015 to ensure this clause cannot be utilised for a purpose for which it was not intended. Investigation into development applications since the introduction of LEP 2015 was undertaken to inform this planning proposal and it was found that there has been minimal utilisation of this clause, and where it has been used it has resulted in poor outcomes that haven't achieved more diverse housing stock.

Introducing Minimum Lot Size controls for Multi Dwelling Housing, including manor houses

The controls surrounding manor houses and terrace houses outlined in the Low Rise Code encourage increased density in residential zones such as R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential. The code allows manor houses and terrace houses to be built on lots of 600m² or greater. This minimum lot size is inconsistent with other minimum lot size requirements in LEP 2015. As such Council is proposing to introduce a minimum lot size for this type of higher density residential development as a means of preventing density growth in inappropriate areas.

The code defines a manor house as being a “building that consists of 3 or 4 dwellings” and terraces as being “multi dwelling housing where all dwellings are attached and are generally aligned along one or more public roads”. Under the code, manor houses are permitted where either multi-dwelling housing or residential flat buildings are permitted under the relevant council Local Environment Plan (LEP) and terraces will be permitted where multi dwelling housing is permitted under the relevant council LEP. LEP 2015 excludes both residential flat buildings and multi dwelling housing from the R2 Low Density Residential zone, therefore the introduction of a minimum lot size for these uses would only apply to R1 General Residential, R3 Medium Density Residential, and B2 Local Centre.

The principal concern is the overdevelopment and unnecessary intensification of residential areas. Given the minimum lot size controls for dual occupancy (attached) are 900m² and dual occupancy (detached) 1100m² in both R1 and R3, it is considered inappropriate to allow more intense residential development in the form of manor houses or terraces to occur on lots of 600m² in these zones. This would result in significant inconsistency in built form and over time will detract from the character and streetscape within these zones. Potential adverse cumulative impacts such as traffic generation, inadequate parking, amenity matters and the like are also considered likely.

The planning proposal seeks to introduce a minimum lot size of 1300m² for multi dwelling housing (terraces). This control will apply to R1 General Residential and R3 Medium Density Residential zones.

In determining an appropriate minimum lot size for multi dwelling housing, Council reviewed a number of NSW Council's controls and found many, like the Blue Mountains, do not prescribe an MLS for multi dwelling housing. From the Councils that do, no numerical consistency could be identified as shown below:

Council	Environmental Planning Instrument	Minimum Lot Size
Ku-ring-gai Council	Ku-ring-gai LEP 2015	1200m ²
Camden Council	Camden LEP 2010	1500m ²
Sutherland Shire Council	Sutherland Shire LEP 2015	1200m ²
Gosford Council	Gosford LEP 2014	750m ²
Penrith Council	Penrith LEP 2010	900m ²
Lithgow Council	Lithgow LEP 2014	800m ²
Kiama Council	Kiama LEP 2011	Density control = 200m ² per dwelling

The proposed minimum lot size of 1300m² is consistent with previous controls in the Blue Mountains LGA in relation to multi dwelling housing. Draft LEP 2013 proposed an MLS of 1300m² for multi dwelling housing and prior to this, LEP 4 adopted a density control requiring a minimum of 400m² per dwelling. The proposed MLS will offer a consistent approach to multi dwelling housing and encourage increased density in desirable locations.

The proposed minimum lot size of 1300m² is substantially larger than the MLS contained in the Housing Code. However, it is considered that larger lots can provide better design outcomes such as building separation, open space, landscaping, solar access, cross ventilation and car parking.

The introduction of a minimum lot size for these uses would ensure the appropriate placement of higher density residential development and ensure the aims of Council and objectives of zones in LEP 2015 could still be met. The Housing Code does not reference or give consideration of other controls in the LEP or DCP, meaning the introduction of a Minimum Lot Size is the only mechanism appropriate to protect against potential undesirable density intensification in residential zones, and limit environmental, heritage, character and social impacts within the Blue Mountains Local Government Area.

Therefore, it is proposed that clause 4.1B(4) be amended to include minimum lots size controls for multi dwelling housing and manor houses. Reference to these land uses will be added to this clause, and the table in the clause amended to introduce a minimum lots size requirement of 1300m² in zone R1 general residential, R3 medium density residential, and B2 local centre, as referenced in the above version of the clause with edits identified in RED.

PART 3 JUSTIFICATION

Section A - A Need for the Planning Proposal

This planning proposal is seeking to amend clause 4.1B in LEP 2015, primarily to introduce consistent minimum lot size controls for dual occupancies to ensure that development under the Low Rise Code cannot occur on lots smaller than intended.

Similarly, this amendment proposes to remove clause 4.1B (3) as with the introduction of the Housing Code, it could result in providing a development pathway for dual occupancies to be erected on lots significantly smaller than otherwise specified in the LEP.

This amendment also proposes the introduction of a minimum lot size for multi dwelling housing (terraces) to minimise this type of development on inappropriately sized lots within the LGA. This is important as there is currently no minimum lot size defined in the LEP for this use.

This planning proposal also 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, garnered 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 previous Minister for Planning and Public Spaces and the Department of Planning Industry and Environment.

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

This planning proposal is the result of Council's Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS) which strategically consider housing diversity across the LGA, alongside other planning considerations such as the protection of environmental values. The Low Rise Code is not compatible with a City within a World Heritage Area and the LSPS, endorsed by the GSC, included two actions to seek an exemption from the Low Rise Code. These actions have been pursued but no exemption has been forthcoming. In the absence of an exemption, this planning proposal seeks to protect the environmental values of the local area and achieve housing outcomes which meet local need but are appropriate within a World Heritage setting.

This proposal is consistent with continuous longstanding planning principles in the Blue Mountains City LGA that aim to minimise adverse environmental impacts such as stormwater runoff through prescriptive controls relating to lot size, site coverage, onsite detention, and development on and around environmentally sensitive land, outlined in the LEP and DCP. Given the location of the LGA within a World Heritage listed National Park, impacts to the environment through increased density, subdivision and land uses are of utmost importance and form the backbone of planning aims and objectives in the local statutory instruments.

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

Yes, this is the best, and only, means of achieving the intended outcome of managing the potential impacts from the Low Rise Code outside of an exemption from the Code, which has not been forthcoming from the Department. An amendment to Blue Mountains LEP 2015 to introduce a single minimum lot size for all dual occupancies, along with the removal of Clause 4.1B(3), and an MLS for multi dwelling housing (terraces) will ensure that consistency is provided between development applications and complying development applications for duals occupancy and terrace development. There are no other relevant means to achieve the objectives and outcomes specified in Part 1, as controls such as frontage requirements and lot width are not referenced in the Housing Code.

Section B - Relationship to strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

This planning proposal is not inconsistent with the Greater Sydney Region Plan (2018), the Western City District Plan (2018) and is consistent with the Blue Mountains 2040; Living Sustainably, Council's Local Strategic Plan Statement.

A Metropolis of Three Cities – The Greater Sydney Region Plan

A Metropolis of Three Cities is the first Regional Plan developed by the Greater Sydney Commission. The Plan provides a vision and actions for managing growth in Greater Sydney and enhancing its status as a global city. The Plan envisions Sydney as three cities connected by transport links. The Blue Mountains is located in the Western City.

The Planning Proposal is consistent with the following objectives of the Greater Sydney Region Plan:

1. *Liveability:*

Objective 10 Greater Housing Supply

Objective 11 Housing Is More Diverse and Affordable

Objective 12 Great Places that Bring People Together

Comment: It is considered that the planning proposal may force some sites to amalgamate for construction, however it does not remove the ability or permissibility of any form of development. Instead the proposed amendments aim to create better quality developments and well-designed neighbourhoods for current and future communities. The majority of housing supply in the Blue Mountains is single detached dwellings. The proposal will not significantly impact on housing supply or the Blue Mountain's ability to meet housing targets.

6. *Sustainability:*

Objective 27 Biodiversity is protected, urban bushland and remnant vegetation is enhanced.

Objective 28 Scenic and cultural landscapes are protected.

Comment: Prescribing a single minimum lot size requirement for dual occupancies and the introduction of an MLS for multi dwelling housing aims to ensure increased density does not come at a cost to the environment. Larger lots reduce the number of potential sites that may be developed for the purpose of increased density, however these larger lot requirements allow for greater flexibility in the design and siting of dwellings on a site. Essentially this will allow for greater areas of high quality landscaping, retention of existing trees and vegetation, and the inclusion of deep soil areas, allowing for appropriate building envelopes to be identified resulting in minimal environmental impact. The amendments will allow for development which does not detract from the environmental value, cultural importance and heritage significance of the area.

Western City District Plan

The Western City District Plan provides subregional objectives which stem from the Sydney Regional Plan. The document also provides a list of Planning Priorities, these priorities work together to create a liveable, vibrant Western City, as well as a sustainable city in its landscape.

The planning proposal is consistent with *Liveability - W5 Providing housing supply, choice and affordability with access to jobs, services and public transport* of the Western City Plan.

Comment: The Western City District Plan notes that new housing is important to meet the needs of Greater Sydney, however this housing must be in the right place to meet the demand for different housing types, tenure, price points, preferred locations and design. More importantly, the District Plan notes that Council is in the best position to determine which areas are best to accommodate for medium density housing and how this will be delivered.

The planning proposal is consistent with *Sustainability - W12 Protecting and improving the health and enjoyment of the District's waterways* and *Sustainability - W14 Protecting and enhancing bushland and biodiversity* of the Western City Plan.

Comment: This Planning Proposal is consistent with the Greater Sydney Region Plan and the Western City District Plan. 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 medium density development can only occur on lots of sufficient size to allow appropriate stormwater management.

The planning proposal is consistent with *Sustainability - W20 Adapting to the impacts of urban and natural hazards and climate change* of the Western City Plan.

Comment: The Western City 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 increased density in the form of dual occupancies and multi dwelling housing, and ensure sites can comply with asset protection zones and various other bushfire risk reduction measures.

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Living Sustainably: Blue Mountains 2040 is Council's Local Strategic Planning Statement (LSPS) and was made on 31 March 2020 following endorsement from the GSC. The LSPS contains 9 local planning priorities. This planning proposal relates most directly to priority 6 Meeting the diverse housing needs of our community, but also aligns with priority 1 Living sustainably within a World Heritage National Park, and priority 5 Conserving and enhancing heritage, character and liveability, both of which contain actions in response to the Low Rise Code.

Action 1.3 Council will seek an exemption from the Low-Rise 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.

Action 5.7 Council will seek an exemption from the Low-Rise 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.

As outlined in the introduction to this planning proposal, in line with these actions, a request for permanent exemption from Low Rise Code was sent to the Minister of Planning and Public Spaces on 30 April 2020. This followed previous requests in June 2018 and July 2019. The grounds for the request for exemption was the unique characteristics of the Blue Mountains Local Government Area as a City within a World Heritage Area. The Low Rise Code threatens to erode these defining features and poses an unacceptable risk to the environmental values of the World Heritage Area through substantial intensification of residential development.

Given that the request for exemption has not been supported, this planning proposal aims to minimise the potential for inappropriate development resulting from the Housing Code.

The LSPS details Council's long standing planning principles and commitment to place based planning as the best means to deliver positive planning outcomes that respond to local context. Actions in the LSPS under local planning priority 6 demonstrate how Council intends to implement the LHS and meet the housing needs of the local community (as well as meet the housing targets set and agreed by the GSC). These include place based master planning of town centres (Action 6.2), pursuing opportunities for infill development (Action 6.3), investigate opportunities for seniors housing (Actions 6.6 and 6.7), and investigate opportunities for multi dwelling housing in appropriate locations (Action 6.8).

This planning proposal does not affect the ability to deliver on these actions. It seeks to amend specific controls in the LEP in response to the operation of the Low Rise Code, to ensure locally appropriate housing outcomes can be achieved.

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 Blue Mountains 2040: Living Sustainably- the Local Strategic Planning Statement which provides the overarching vision and direction for future land use planning in the Blue Mountains. The LHS provides an understanding of the housing needs of local community, analyses whether current planning frameworks can meet those needs and provides options for updates to the local planning framework to ensure these housing needs can be met in the future.

The proposal is consistent with the housing vision outlined in the LHS which states, '*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 correlates with Council's vision of protecting and conserving the natural environment while providing adequate housing choice. The proposal does not seek to remove permissibility, but instead increase lot size to encourage better environmental outcomes, while also responding to economic (affordability) and social (housing mix) needs.

Dwelling Potential

The effect on dwelling potential due to this planning proposal has been considered to ensure that it aligns with expectations in the Blue Mountains Local Housing Strategy. This analysis was undertaken during the preparation of this proposal and informed the nominated minimum lot size controls.

The proposed change to dual occupancy minimum lot size controls is expected to improve dwelling potential.

The need to have a single dual occupancy minimum lot size for both attached and detached dual occupancies is necessitated by the Low Rise Code. This means that the potential for attached dual occupancies to occur on lots as small as 720m² has been removed, resulting in a reduced potential on approximately 509 lots. However, as outlined in this planning proposal, the majority of dual occupancy applications and enquiries are for detached dual occupancies rather than attached dual occupancies.

In summary, the proposal to remove clause 4.1B(3) will remove the potential for dual occupancies to occur on some lots (being those between 720m² and the proposed minimum lot size of 1000m²). However, as referenced above, there has been minimal take-up of this provision. This is potentially due to the restrictions within the clause to create an attached dual occupancy, where one of the dwellings is no greater than 100m².

In this regard, the proposed minimum lot size reduction for detached dual occupancies from 1100m² to 1000m² would allow dual occupancies to occur on an additional 404 lots. Therefore, as a result it is anticipated that the proposed change may increase the take-up of dual occupancy opportunities.

Importantly, the take up of dual occupancy opportunities in the Blue Mountains is only a small proportion of the number of lots on which they can potentially occur. There are 1196 lots in the R2 Low Density Residential zone that would be available for dual occupancies based on the

proposed 1000m² minimum lot size control. As detailed in the LHS, historically 8 dual occupancies are built on average each year, representing only 5% of the historic annual new dwelling supply in the Blue Mountains. This is not forecast to change. Secondary dwellings, since permissibility was expanded in LEP 2015, have represented a more common form of development in established low density areas. Therefore, based on this analysis, the planning proposal is considered to facilitate the take-up of dual occupancies on suitably sized allotments.

The introduction of a minimum lot size control for multi dwelling housing will not affect dwelling potential. It will however mean the consolidation of lots is required in some instances to meet the minimum lot size control. Despite there being no current minimum lot size control for this land use, the need for consolidation of smaller lots is already the case to achieve an efficient and viable development outcome. Additionally, the proposed minimum lot size also allows for the development of 101 lots, or 24% of lots, in the R3 zone that would meet the minimum lot size control of 1300m² without the need for consolidation.

Water Sensitive Blue Mountains Strategic Plan

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.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The following table documents the application and consistency 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 16A.

² **Consistent:** This SEPP applies; LEP 2015 Draft Amendment 16A meets the relevant requirements and is in accordance with the SEPP.

³ **Justifiably Inconsistent:** This SEPP applies; LEP 2015 Draft Amendment 16A 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	✓		
Chapter 4	Concurrences and consents	✓		

<u>State Environmental Planning Policies in force</u>		NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
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 relevant SEPP's. A summary of compliance with certain SEPP's is provided below.

SEPP (Biodiversity and Conservation) 2021

This Planning Proposal is consistent with Chapter 8 of the Biodiversity and Conservation SEPP. Some parcels affected by this proposal may fall within the Sydney Drinking Water Catchment, however the nature of this proposal is to limit certain development types in the Blue Mountains. This is consistent with the aims and objectives of LEP 2015 in relation to the protection of the environment (including the Sydney Drinking Water Catchment), which aim to:

(e) to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of the Blue Mountains,

(g) to preserve and enhance watercourses, groundwater, riparian habitats, wetlands and water quality within the Blue Mountains, the Hawkesbury-Nepean River catchment and Sydney's drinking water catchments, and

(h) to prescribe limits to urban development having regard to the potential impacts of development on the natural environment and the provision, capacity and management of infrastructure.

This planning proposal does not adversely impact on water quality. In addition, 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. Nothing in this planning proposal seeks to diminish or contradict these provisions.

SEPP (Exempt and Complying Development Codes) 2008

The introduction of the Low Rise Housing Diversity code to SEPP Exempt and Complying Codes, aims to facilitate dual occupancy, terrace housing and manor houses with greater built form and density than currently permitted by Blue Mountains LEP 2015.

Under the Low Rise Code, dual occupancy with greater FSR than that permitted by LEP 2015 could be realised on lots substantially smaller than otherwise prescribed in LEP 2015. This type of development can proceed as complying development and would not be subject to development

assessment, provided it meets the controls identified in SEPP (Exempt and Complying). Similarly, the Code allows multi dwelling housing with greater FSR than that permitted by LEP 2015 on small lots without the need for a Development Application.

The increased FSR combined with reduced setbacks and minimal landscaping standards in the SEPP will result in an overall reduction in landscaping and an increase in building bulk and scale when compared to that achieved under local controls. These changes will jeopardise the neighbourhood character in residential zones, with amenity impacts on neighbours and reduced opportunities to retain or plant trees.

The Housing Code assumes that LEPs specify a minimum lot size for dual occupancy and multi dwelling development, stating that applicants must 'check land zoning and minimum lot size' for a council area, set by the Standard Instrument LEP model clause "4.1B Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings". Blue Mountains LEP 2015 does not have these provisions. Without a minimum lot size clause, the impact of the SEPP in the Blue Mountains will be inconsistent with the low density character of the area.

6. Is the planning proposal consistent with applicable Directions by the Minister (previous s.117) Directions

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

Note:

¹ **Not Relevant:** This direction does not apply to land within LEP 2015 Draft Amendment 16A.

² **Consistent:** This direction applies; LEP 2015 Draft Amendment 16A meets the relevant requirements and is in accordance with the direction.

³ **Justifiably Inconsistent:** This direction applies, but LEP 2015 Draft Amendment 16A does not meet all the requirements or may be inconsistent with this direction as outlined following the table.

Directions by the Minister (previous s 117(2))		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
1. EMPLOYMENT AND RESOURCES				
1.1	Business and Industrial Zones	✓		
1.2	Rural Zones	✓		
1.3	Mining, Petroleum Production and Extractive Industries	✓		
1.4	Oyster Aquaculture	✓		
1.5	Rural Lands	✓		
2. ENVIRONMENT AND HERITAGE				
2.1	Environmental Protection Zones		✓	
2.2	Coastal Management	✓		
2.3	Heritage Conservation	✓		
2.4	Recreation Vehicle Areas	✓		
2.5	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	✓		
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT				
3.1	Residential Zones		✓	
3.2	Caravan Parks and Manufactured Home Estates	✓		
3.3	Home Occupations	✓		
3.4	Integrating Land Use and Transport	✓		
3.5	Development Near Regulated Airports and Defence Airfields	✓		
3.6	Shooting Ranges	✓		
3.7	Reduction in non-hosted short term rental accommodation period	✓		
4. HAZARD AND RISK				
4.1	Acid Sulfate Soils	✓		
4.2	Mine Subsidence and Unstable Land	✓		

<u>Directions by the Minister (previous s 117(2))</u>	NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
4.3 Flood Prone Land	✓		
4.4 Planning for Bushfire Protection	✓		
5. REGIONAL PLANNING			
5.1 Implementation of Regional Strategies	✓		
5.2 Sydney Drinking Water Catchments		✓	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	✓		
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	✓		
5.9 North West Rail Link Corridor Strategy	✓		
5.10 Implementation of Regional Plans	✓		
5.11 Development of Aboriginal land Council land	✓		
6. LOCAL PLAN MAKING			
6.1 Approval and Referral Requirements		✓	
6.2 Reserving Land for Public Purposes	✓		
6.3 Site Specific Provisions		✓	
7. METROPOLITAN PLANNING			
7.1 Implementation of A Plan for Growing Sydney		✓	
7.2 Implementation of Greater Macarthur Land Release Investigation	✓		
7.3 Parramatta Road Corridor Urban Transformation Strategy	✓		
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	✓		
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Plan	✓		
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	✓		
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	✓		
7.9 Implementation of Bayside West Precincts 2036 Plan	✓		
7.10 implementation of Planning Principles for the Cooks Cove Precinct	✓		

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

Direction 2.1 Environment Protection Zones

The planning proposal is consistent with the objectives of this Direction as any land affected by the proposal which contains environmentally sensitive land will be subject to the provisions of LEP 2015 clause 6.1 *Impact on Environmentally Sensitive Land* and will be assessed in detail.

Direction 3.1 Residential Zones

This amendment is consistent with the objectives of this Direction, as it does not change the permissibility of any uses within the residential zones. The proposal only seeks to amend and introduce additional development standards, specifically minimum lot size controls. It should be noted that other current development controls have the effect of requiring a lot of a certain size in practice to be able to effectively and appropriately develop. This proposal only seeks to formalise this with minimum lot size controls to ensure that such development cannot occur on lots smaller than intended under the Low Rise Code.

The proposal maintains the opportunity for various housing types to suit the needs of the local community both now and in the future.

Direction 5.2 Sydney Drinking Water Catchment

This amendment is consistent with the objectives of this Direction, as the proposal seeks to limit increased density on unsuitable lots, therefore further protecting the environment including the Sydney Drinking Water Catchment.

Direction 6.3 Site Specific Provisions

The planning proposal is consistent with the objectives of this Direction, as it does not seek to unnecessarily restrict site specific planning controls. The proposal has been prepared based on a detailed analysis of how the Housing Code will potentially affect the area, other Council areas relevant controls, and past local planning frameworks. Although the planning proposal introduces new development controls, it is not inconsistent with the objectives of this direction as it is considered that all properties suitable for dual occupancy and multi dwelling construction across the Blue Mountains will continue to be able to be developed at the lot sizes proposed under this planning proposal.

Direction 7.1 Implementation of A Plan for Growing Sydney

This amendment is consistent with the objectives of this Direction, as the introduction of an MLS for dual occupancy and multi dwelling housing is an administrative function and does not impact on the ability to achieve the strategic directions and actions of 'A Plan for Growing Sydney'.

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?

No. The proposal endeavours to further protect the unique environment of the Blue Mountains including critical habitats, threatened species, populations, ecological communities and their habitats through the strengthening of controls limiting more intense development to only the most suitable sites. The Low Rise Code also only applies to the R1, R2 and R3 zones. Therefore, the protective provisions contained in LEP 2015 and DCP 2015 will remain applicable to any future development in all other zones and within the R zones for all other types of development, and any development that does not satisfy the controls in the 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 sufficient controls for the protection of the environment, and nothing in this amendment seeks to diminish or contradict these provisions.

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

This planning proposal seeks to make an amendment to LEP 2015 by introducing a minimum lot size for multi dwelling housing, which will ensure that this type of development is only erected on the most suitable lots. The introduction of an MLS will regulate density intensification in the area. This would have positive social effects as this control will be consistent with the zone objectives of the LEP and will reflect the community's attitude towards increased density and specific types of development. This amendment will protect residential character and streetscape through site coverage controls which aligns with all other local planning aims and objectives.

It is expected that there would be minimal to no economic impacts directly linked to this planning proposal.

Section D - State and Commonwealth Interests

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

This planning 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.

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

PART 4 MAPPING

The Planning Proposal does not seek to amend any maps within the Blue Mountains Local Environmental Plan 2015.

PART 5 COMMUNITY CONSULTATION

The Planning Proposal and draft LEP amendments will be publicly exhibited for a period of least 28 days or in accordance with the Gateway Determination and Council's Community Participation Plan. Notification will be in accordance with the directions of the Gateway Determination. Notification of the Proposal will also be placed in the local newspaper and the exhibition material made available on Council's website as well as hard copies at Council's customer service centre.

At the conclusion of the exhibition period, a report will be presented to Council detailing the submissions received.

PART 6 PROJECT TIMELINE

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

September 2021	Planning Proposal reported to the Local Planning Panel for comment
October 2021	Planning Proposal reported to the Council
June 2022	Planning Proposal modified and reported to Council
July 2022	Submission of planning proposal to DP&E (for the GSC) for 'gateway review' of draft Amendment to LEP 2015
August 2022	Gateway determination issued with condition to remove stormwater component, changing policy intent of adopted planning proposal
January 2023	Letter from the Department of Planning with notice to not proceed, and request to resubmit
February 2023	Revised Planning Proposal reported to Council for endorsement
March 2023	Lodge for Gateway Review
April 2023	Gateway Determination
8 June 2023	
July 2023	Liaise with DP&E on satisfactory compliance with Gateway Determination conditions prior to public exhibition
August 2023	Public exhibition and agency consultation
October 2023	Report to Council for adoption
December 2023	Finalisation and making of amendment