



IRF 24/700

Plan finalisation report – PP-2023-513

Blue Mountains Local Environmental Plan 2015 - Introduce a single minimum lot size for dual occupancy (attached and detached), introduce minimum lot sizes for multi dwelling housing and manor houses and remove clause 4.1B(3)

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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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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Blue Mountains Local Environmental Plan 2015 (Amendment No. 16).

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal (Attachment A) applies to certain land subject to the Blue Mountains LEP 2015, as depicted in Figure 1, including:</p> <ul style="list-style-type: none"> Residential land use zones being R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential. Commercial land use zones being E1 Local Centre, E2 Commercial Centre, E4 General Industrial identified as “Area 1” on the Land Zoning Map. <p>Areas identified as a ‘deferred matter’ in the Blue Mountains LEP 2015 land application map are not part of this planning proposal. These ‘deferred matters’ are shown in red in Figure 1.</p>
Type	District
Council	Blue Mountains City Council
LGA	Blue Mountains

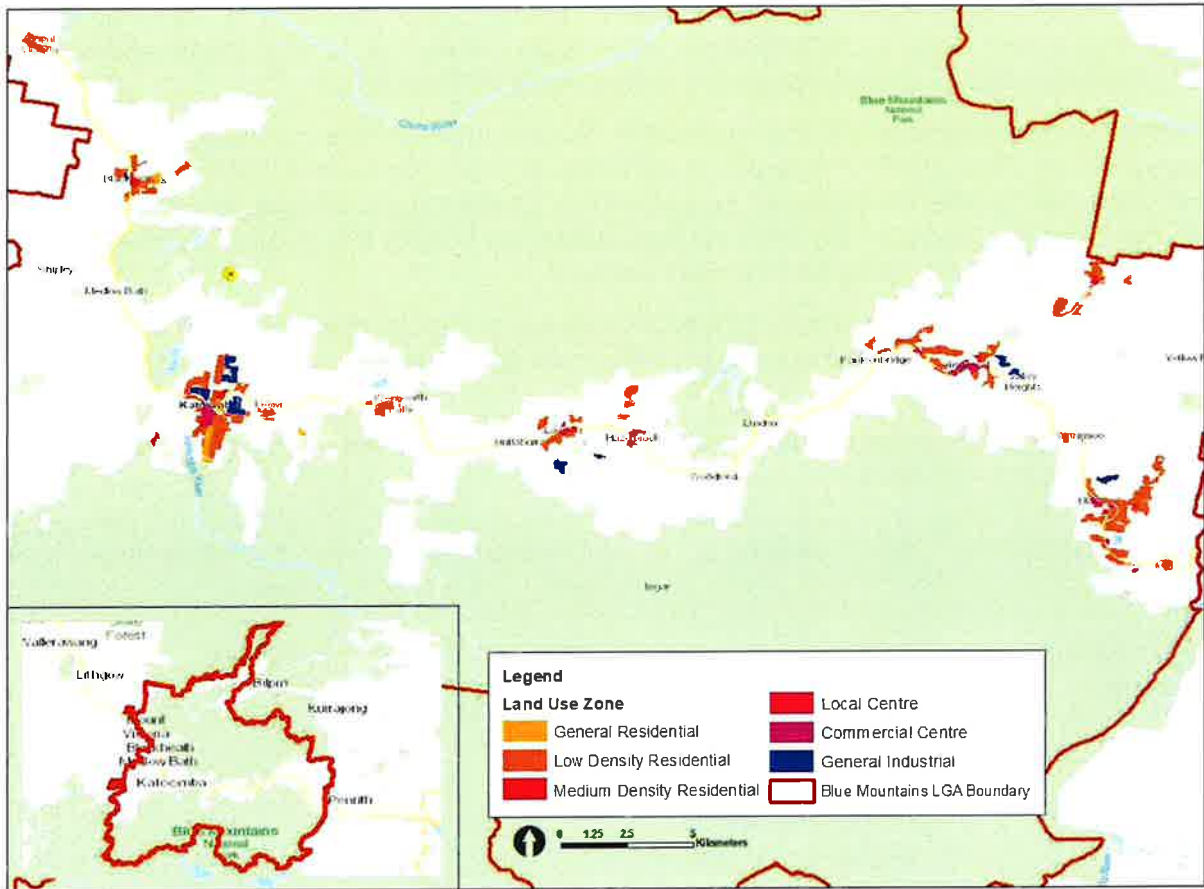


Figure 1. The subject area depicting the relevant land use zones.

2 Purpose of plan

The purpose of this planning proposal is to ensure that the outcomes of the Low Rise Housing Diversity Code align with the intended outcomes of the Blue Mountains Local Environmental Plan 2015.

2.1 Exhibited Planning Proposal

The planning proposal was exhibited from 14 August 2023 to 13 September 2023. The exhibited planning proposal (**Attachment A**) sought to introduce a single minimum lot size for dual occupancy (attached and detached), introduce minimum lot size controls for multi dwelling housing and manor houses and remove clause 4.1B(3).

The draft LEP amendment will amend the Blue Mountains LEP 2015 by:

- amending the minimum lot size for dual occupancy housing (attached and detached);
- introducing a minimum lot size for multi dwelling housing, including manor houses; and,
- the removal of Clause 4.1B(3).

The current and proposed controls for the proposed LEP amendment are summarised in Table 2.

The exhibited planning proposal indicates that the introduction of a single dual occupancy lot size control for dual occupancy housing will result in a reduced housing potential for approximately 509 lots.

Further, the proposal advises that 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, potentially increasing dual occupancy opportunities in this regard.

The proposal also indicates that 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 currently 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.

Table 2. Current and proposed minimum lot sizes for dual occupancies pursuant to clause 4.1B(4) of the Blue Mountains LEP 2015.

Type of development	Land use zone	Existing minimum lot size	Proposed minimum lot size
Dual occupancy (attached)	R1 General Residential	900m ²	1000m ²
	R2 Low Density Residential		
	R3 Medium Density Residential		
	E1 Local Centre		
	E2 Commercial Centre		
	E4 General Industrial identified as "Area 1" on the Land Zoning Map		
Dual occupancy (detached)	R1 General Residential	1,100m ²	1000m ²
	R2 Low Density Residential		
	R3 Medium Density Residential		
	E1 Local Centre		
	E2 Commercial Centre		
	E4 General Industrial identified as "Area 1" on the Land Zoning Map		
Multi dwelling housing	Zone R1 General Residential	nil	1300m ²

Type of development	Land use zone	Existing minimum lot size	Proposed minimum lot size
	Zone R3 Medium Density Residential 1300 square metres	nil	1300m ²
	Zone E1 Local Centre 1300 square metres		
	Zone E2 Commercial Centre 1300 square metres		
Manor houses	Zone R1 General Residential 1300 square metres	nil	1300m ²
	Zone R3 Medium Density Residential 1300 square metres		
	Zone E1 Local Centre 1300 square metres		
	Zone E2 Commercial Centre 1300 square metres		

2.2 State electorate and local member

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

The site is within the Macquarie Federal Electorate. Ms Susan Templeman MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

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

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

3 Gateway determination and alterations

The Gateway determination issued on 8 June 2023 (**Attachment B**) determined that the proposal should proceed subject to conditions.

To comply with Conditions 1 and 2 of the Gateway determination, the planning proposal was amended by Council:

- Condition 1: references to seeking an amendment to the Low-Rise Housing Diversity Code in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 in relation to stormwater management were removed from the planning proposal.

- Condition 2: the proposal was updated to include the change in dwelling potential as a result of proposed minimum lot sizes.
- In regard to Condition 3, exhibition extended from Monday, 14 August to Wednesday 13 September (23 working days), compliant with the condition.

Council has met all the Gateway determination conditions.

In accordance with the Gateway determination the proposal is to be finalised by 8 June 2024.

The Department is satisfied that Council has met the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

Gateway alterations have not been issued for this planning proposal.

4 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from Monday, 14 August 2023 to Wednesday, 13 September 2023, as required by section 29 of the *Local Government Act 1993*.

Notices of exhibition were published in the Blue Mountains Gazette during this period and Council made exhibition material available on Council's website and in 'hard copy' at Council's Customer Service Centre.

Council made minor changes of an administrative nature to the planning proposal document post exhibition. These amendments were:

- Updating the reference and ordering of Ministerial Directions on pages 18 to 20 of the planning proposal in line with legislative changes from 20 February 2023.
- Updating zone references to reflect the department's employment land zone reforms.
- Updating other references to be consistent with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and general clarity of the document.

4.1 Submissions

Council received five written submissions during the exhibition period (four were received during the exhibition period and one was referred by the Department of Planning to Council). Three submissions were from one single business; one from a community group; and, advice from WaterNSW. These have been addressed by Council in its report of 31 October 2023 (**Attachment C**; attachment to that report – **Attachment C1**; and resolution **Attachment D**, refer). These are summarised in Table 3 (following) and details are provided, as follows.

Submissions supporting the draft planning proposal

Two submissions, including advice from WaterNSW, were largely in support of the planning proposal.

One submission supported Council's efforts to obtain a local exemption to the Low Rise Code. This submission was supportive of this latest effort to mitigate the potentially negative environmental and character impacts of this form of development, while commenting on the potential to not comply with SEPP (Biodiversity and Conservation) 2021 for land within the Sydney drinking water catchment of the Blue Mountains.

One submission in support did identify elements of the proposal that required to be updated or changed. Council made minor changes of an administrative nature to the planning proposal document in response.

Comment was also made over retaining the minimum lot size for detached dual occupancies as 1,100m². In response, it was considered that the proposed 1,000m² minimum lot size for all dual

occupancies is considered appropriate as it assists in ensuring that the opportunity for this development type is not limited and can be provided on sufficiently sized lots.

Submissions objecting to the draft planning proposal

Three submissions were received by Council objecting to the draft planning proposal. All three were from a single business (two from the business and the third, a personal submission from the Director of this business). The issues outlined in these submissions generally align and Council addressed these collectively.

The concerns raised largely relate to a lack of perceived justification for the amendments within the proposal, suggesting that departures from ministerial directions and relevant State and Commonwealth objectives, regarding housing choice - have not been addressed.

In addition, it was indicated that the proposal does not provide evidence to support the rationale that the existing minimum lot provisions of LEP 2015 have resulted in undesirable planning and built form outcomes. Similarly, it is stated that the proposal does not effectively investigate the social or economic impacts of the amendments.

Other issues raised by the submitters include concerns that dual occupancies, as a form of development, would be generally less viable as the larger lot sizes align with higher valued land. This potentially could detract from the affordability element associated with dual occupancies as modest housing alternatives.

In response, the report noted that this is not considered to be a significant impact on affordability, given the proposed lot size for dual occupancies overall is only marginally larger than currently permitted (notwithstanding the provisions under clause 4.1B(3)).

Further, the three submissions highlighted that clause 4.1B (3) of LEP 2015 is considered to provide positive planning outcomes and objected to its proposed removal in this amendment. This clause allows for attached dual occupancies on land as small as 720m² provided one dwelling does not exceed 100m² of gross floor area.

The Council report indicates that based on an assessment and review by Council planning officers, the outcomes currently being achieved under clause 4.1B (3) do not represent high positive planning outcomes. The intent of the clause was to facilitate new smaller dwellings to provide further housing diversity. Contrary to this, the clause has been used to retain smaller older housing stock and create new larger dwellings. Notwithstanding the current use of the clause, as outlined in the Planning Proposal, the reason this clause is proposed to be removed is that there is no provision in the Low Rise Code that can capture the restriction to gross floor area as prescribed in LEP 2015. As a result, the minimum lot size of 720m² could then be utilised for any dual occupancy development under

Letters of objection received by the Department

The department also received submissions from the single business. As indicated, this business had previously made a submission to Council. For transparency, the Department agreed to take into consideration the further views of this business.

A review of this correspondence is included in a following section of this report.

4.2 Advice from agencies

The Gateway determination did not require Council to consult with agencies.

WaterNSW, however, provided a submission to Council. WaterNSW was generally supportive of the proposal and raised no objection in relation to the proposed LEP amendments.

The agency expressed support for larger lot sizes as a tool to reduce potential stormwater related impacts. The agency, however, noted that the reference to the numbering of *Ministerial Direction 3.3 Sydney Drinking Water Catchment* required amendment in Council's planning proposal. The

numbering in Council's planning proposal was updated to reflect legislative changes from 20 February 2023.

Clarification was sought regarding any additional proposed amendments to clause 4.1B(4) which pertains to subdivision for dual occupancies. In the Council's response to submissions (**Attachment C**), Council notes that this was reviewed and it is not considered to be a risk in relation to this subclause and access to the Low-Rise Code. Therefore, Council does not propose any further changes to the proposed amendment. Future interrogation of the subclause will be undertaken as part of a review of these subclause provisions at the LEP level.

5 Council's response to submissions

The Department considers Council has adequately addressed the matters raised in submissions and the advice from WaterNSW.

6 Post-exhibition changes

6.1 Council resolved changes

With the exception of minor administrative changes to the planning proposal, at Council's Ordinary Meeting on 31 October 2023, Council resolved to proceed with the planning proposal with no further post-exhibition changes.

6.2 The Department's recommended changes

The Department recommends no further post exhibition changes.

7 Department's assessment

7.1 Assessment of letters in objection

As indicated, the Department received submissions in objection to the proposal from a single business i.e., a commercial company. This company had previously made a submission in objection to Council and this submission has been addressed by Council under part 4.1 of this report. For transparency, the Department agreed to take into consideration the further views.

In summary the objection relates to:

- the proposal is inconsistent with the Government's position for housing;
- a decrease in housing choice, affordability and supply as the proposal would only allow dual occupancies to be on lots comprise an area of 1000m² or greater; and,
- the increased lot size will result in development proposals for small scale dual occupancy being unviable.

In respect of the proposal's consistency with the Government's position on housing, the Department has taken the view that the proposal is consistent with Council's Local Housing Strategy, noting that 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.

Further, the Department has taken the view, given the circumstances, the proposal is not inconsistent with the relevant priorities of the Western City District Plan and section 9.1 Directions, including Direction 6.1 Residential Zones.

The remaining concerns are primarily determined by the impact upon dwelling potential numbers determined by Council and the mismatch with those assessed by the objector.

To further understand the likelihood of the proposal adversely affecting housing affordability and choice, the department reviewed Council's approach to determining dwelling potential.

The key issue in the disparity in the potential housing numbers relates to Council's application of certain exclusion criteria and as Council has only considered affectation in the R2 Low Density Residential Zone. This approach is not considered to be unreasonable as Council considers that while dual occupancy housing is permitted with consent in the R3 and R1 zones, these areas are capable of higher density housing and development should be less focused on dual occupancies with a preference for multi-dwelling housing. Further, Council's criteria as follows, is also considered to be reasonable.

- A minimum of 80% of the lot's land must be zoned as the relevant residential zone.
- That the lot is not mapped as being part or wholly bushfire prone land.
- Lots that were highly unlikely to be developed for dual occupancy development were excluded. For example, lots that were excluded were identified as: schools, civil service buildings, churches, and common property.
- Lots that were subject to heritage controls were also excluded.

It is noted that loss of potential housing numbers provided by the objector, does not provide this fine grain analysis.

The Department also noted that further analysis may have been undertaken over the implementation of the criteria or testing of assumptions relating to allotment size and split zones, bushfire affection, and topography. While this is the case, the Department acknowledges that land use planning in the Blue Mountains relies heavily upon particular site-specific analyses and merit-based assessments. Detailed assessment of each allotment is beyond reasonable scope in this instance and Council, in the Department's opinion, has conducted an analysis that is fit for purpose.

Consequently, the Department is satisfied this approach is well justified and the issues raised by the objector do not impede the proposal being made, as endorsed by Council.

7.2 Department's Overall Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. The proposal has also been subject to public consultation and engagement.

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

As outlined in the Gateway determination report (**Attachment G**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions]
- Remains consistent with all relevant SEPPs

Table 3 and Table 4 identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these matters are addressed in Section 4.

Table 3 Summary of strategic assessment

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

Table 4 Summary of site-specific assessment

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

8 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment E).</p> <p>Council confirmed on 3/04/2024 that it approved the draft and that the plan should be made (Attachment F).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 3/04/2024 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

9 Recommendation

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

- The proposed reclassification holds strategic merit, being generally consistent with the Greater Sydney Region Plan and the Western City District Plan.
- It is consistent with the Gateway determination and all conditions have been resolved.
- The issues raised during consultation have been addressed and there are no outstanding concerns
- The department accepts that this proposal will result in a net loss of dwelling potential, however, this loss is justified with regard to the need to balance environmental considerations in the Blue Mountains.
- The proposal will assist in enabling potential housing by the introduction of a reduced minimum lot size for certain dual occupancy development.
- The proposed amendments to the Blue Mountains LEP create housing capacity in appropriate locations in balance with the environmental constraints of the Blue Mountains LGA.



Terry Doran
Manager, Local Planning

6/5/24



Felicity No
Director, Local Planning

Assessment officer

Liza Miller
Senior Planning Officer, Local Planning

Attachments

Attachment	Document
A	Planning proposal
B	Gateway determination
C	Response to submissions – Ordinary Council Meeting – 31 October 2023
C1	Attachment (response table) to Council report of 31 October 2023
D	Blue Mountains City Council. Minutes of Ordinary Meeting of Council. 31 October 2023. Item 12. 23/188053. LEP 2015 Draft Amendment 16A (Response to Low Rise Code) – Public Exhibition Outcomes. Minute No. 228
E	Section 3.36(1) consultation with Council
F	Council comments on draft LEP
G	Gateway determination report
PC	Opinion - Parliamentary Counsel