

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
(Draft Amendment 20)



Draft Blue Mountains LEP 2015 Amendment 20: Principal Development Area Amendment

Maintained By	City Planning Statutory Planning Team			
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1.1	Council Endorsement			Draft
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Introduction

This Planning Proposal has been prepared by Blue Mountains City Council to amend clause 4.4B Principal Development Area (PDA) in *Blue Mountains Local Environmental Plan 2015* (LEP 2015).

The focus of this Planning Proposal is to improve the clarity and streamline the application of clause 4.4B, while retaining the current balance of environmental protection and development potential achieved under the current clause.

The PDA provision has been in place for larger bushland lots with residential development potential since the commencement of the *Blue Mountains Local Environmental Plan 1991* (LEP 1991). Under LEP 2015, the provision applies to any lot which contains more than 4000m² of land zoned C3 Environmental Living or C4 Environmental Management.

The lands to which the clause applies are located on the fringe of the developed areas of the Blue Mountains, usually at the interface with the National Park or bushland reserves which connect into the World Heritage area. The lots themselves are predominantly bushland and usually contain large tracts of environmentally sensitive land with limited development potential.

In addition to their environmental sensitivity, many of these lots contribute to the unique bushland character of the Blue Mountains and World Heritage area. Large scale development on these sites would potentially impact on the significant bushland character of the locality, and also on the World Heritage Area, through increased impervious area and associated stormwater runoff, weed invasion and visually intrusive development.

The PDA clause (clause 4.4B) seeks to confine all development to a single area within the site; set the overall size of development on large lots based on the environmental sensitivity of the land; and restrict development on environmentally sensitive land. The existing clause also includes a development standard prescribing the boundary setbacks to screen development from view from outside of the lot.

Council has reviewed the operation of the PDA provisions in clause 4.4B of LEP 2015, in response to the number of clause 4.6 variation requests being pursued in the development application process, as well as feedback from staff and applicants regarding the challenges in interpreting the PDA clause.

The review of clause 4.4B found it was generally working to achieve the primary intent of confining the size of development on a large lot, while also locating development within a single PDA, and avoiding Environmentally Sensitive Land (ESL), separately defined in LEP 2015. However, setback provisions in the clause were regularly subject to clause 4.6 variations, with these variations generally resulting in better environmental outcomes. In addition, the review also identified refinements to the PDA provisions that would improve clarity of the clause and the protection for the most environmentally sensitive sites.

This Planning Proposal responds to this review and seeks to amend the current clause 4.4B Principal Development Area clause and the associated definition of Notional Development Area (NDA) contained within LEP 2015.

Local Planning Panel

This Planning Proposal was referred to the 22 January 2024 meeting of the Local Planning Panel for advice as a requirement of the plan making process. Planning Proposals must be forwarded to the Local Planning Panel for advice (the LPP is not a determining body for Planning Proposals) before Council considers whether or not to forward the Planning Proposal to the Minister for Planning and Public Spaces requesting a Gateway Determination.

The Local Planning Panel considered the Planning Proposal and agreed with the need to amend the Principal Development Area clause 4.4B of Blue Mountains LEP 2015. The Panel was satisfied the proposed changes, with supporting amendments in Blue Mountains Development Control Plan 2015, were an appropriate mechanism to achieve the intent of the changes - namely, to clarify and streamline the operation of the clause, while retaining and enhancing protection of environmentally sensitive land and appropriately guiding development. Further minor refinements were also suggested to the drafting of the clause, but not to the intent of the proposed changes. However, after due consideration, it was determined that these suggestions were outside of the scope of the PDA clause and addressed in other clauses in LEP 2015.

PART 1 OBJECTIVES AND INTENDED OUTCOMES

Objectives

The purpose of this planning proposal is to amend Clause 4.4B of LEP 2015, to improve its clarity and streamline its application, while retaining the key environmental outcomes it achieves.

The planning proposal also proposes to change the definition of a notional development area (NDA) within LEP 2015.

Background

PDA provisions were first introduced in LEP 1991, applying to larger bushland conservation lots with residential potential, primarily located on the fringe of townships. The intent of the PDA clause was to provide a mechanism to limit clearing of bushland to a specific area of the site in bushland conservation zones. The PDA provisions were amended in LEP 1991, and subsequently translated into the LEP 2015 (under the Standard Instrument order) without further review.

The number of lots to which the PDA clause applied increased under LEP 2015, when land previously zoned Living – Bushland Conservation under LEP 2005 was translated into the C4 Environmental Living Zone under LEP 2015. A PDA control did not apply under LEP 2005.

As a result of this translation from LEP 2005, the PDA provisions now also apply in settings more characterised by urban development, where the strict PDA screening requirements envisaged under LEP 1991 are often inconsistent with the longstanding pattern of development in the area.

In addition, there is a legacy of dwelling houses originally approved under that instrument which do not comply with the PDA requirements, when further development applications are submitted for alterations and additions, or ancillary development to the existing dwelling house.

Intent of the current PDA Clause

The current PDA clause seeks to establish a single development envelope which constrains the size and location of development on a lot.

This is achieved by setting a maximum size for the PDA development envelope, with the size being determined having regard to the extent of environmentally sensitive land which is located within the C3 or C4 Zoned land on the lot. The clause also requires all development, except that specifically excluded under the clause, to be located within a single development envelope (the PDA). The PDA is also required to be located outside of any environmentally sensitive land on the lot.

The clause also currently requires that development is screened from view from outside the lot. This is achieved by applying setback requirements to the PDA development envelope, to provide areas around the boundary of the site, where native vegetation is retained or provided to screen the development.

Two exceptions form part of the current PDA clause, as below:

- Lots and dwellings established before the PDA control was introduced in LEP 1991. Such lots and dwellings would not comply with the PDA requirements. The exception allows development which is ancillary or incidental to these dwellings to be approved even if it doesn't comply with the PDA development standards, but only if the criteria in the exceptions subclause are met.
- Lots that are zoned to permit a dwelling house but are so environmentally constrained that less than 750m² of the site is free of ESL. The exception allows for approval of a development envelope of a reasonable size (750m²) to be established, but only if the criteria in the exceptions subclause are met.

Importantly, the PDA clause does not apply to the subdivision of land, the clearing of vegetation required to establish an asset protection zone, or provision of vehicular access or public utility services. These forms of development are still subject to other environmental assessments. LEP 2015 Clause 6.1- Impact on Environmentally Sensitive Land applies to all development applications involving development on environmentally sensitive land in Zone C3 or C4, and development on land near Blue Mountains National Park, including land to which the PDA clause applies. All other development must be located within the PDA.

Once the development envelope is established through the PDA controls, other planning provisions in LEP 2015 and DCP 2015, as well as Planning for Bush Fire Protection 2019, then determine the design of development within the PDA. For example, building size within the development envelope created by the PDA provisions, is further controlled by the Site Coverage and Landscape provisions in the LEP and the LEP height provisions. Design of the buildings and services such as onsite sewerage and stormwater management within the PDA are also addressed by a range of LEP and DCP controls.

Review of the Operation of the PDA Clause

A review of the operation of the PDA provision has been conducted in preparing the Planning Proposal with the following key findings:

- The PDA clause is working as required to consolidate all development into a single development envelope and restricts the extent of clearing within the lot by establishing a maximum development envelope. The PDA clause has also been successful in restricting development on ESL.
- There are no other provisions in the LEP or DCP which achieve these important outcomes.
- The exceptions provision for ancillary and incidental development to pre-existing dwelling houses is regularly used.

However, there were areas where improvements should be made to improve the clarity, and streamline the application of clause 4.4B, while retaining the current balance of environmental protection and development potential achieved under the current clause.

- *Setback requirements*

Clause 4.6 variations to the minimum PDA setback development standard are regularly being sought and upheld.

As part of the review of the operation of the PDA provision it was found in the period from September 2018 to January 2024, there have been 56 development applications determined with sought a clause 4.6 variation to the PDA development standard. Of these, 41 development applications sought to vary only the PDA setback development standard in clause 4.4B, under delegation or by the Local Planning Panel. It is noted that the clause 4.6 variation request was supported in 40 of the 41 development applications.

Of these 41 development applications, 18 were determined by the Local Planning Panel. The panel also determined another 15 development applications which sought variations to one or more other PDA development standards, including PDA size, ESL in the PDA and/or a split PDA. Seven of these other applications were refused by the LPP, in accordance with staff recommendations, and had multiple reasons for refusal including non-compliance with the PDA requirements.

A detailed review of the development applications seeking setback variations was conducted as part of the review process. The review found that where variations to setbacks were supported, they had resulted in the siting of the PDA in the more suitable location, minimising vegetation disturbance and/or impacts on environmentally sensitive lands. Variations sought were almost exclusively to street and side boundary setbacks.

The review concluded that the supported PDA setback variations resulted in better environmental outcomes than strict compliance with the setback development standards and that greater flexibility in the application of PDA setback requirements was required. Not only would greater flexibility improve environmental outcomes, but potentially shorten development assessment times by avoiding the need to refer the application to the Local Planning Panel, which can add 4-6 weeks to the assessment time.

In summary, where setback variation requests are upheld, a better environmental outcome is achieved, by locating the PDA outside of environmentally sensitive land and/or minimising the extent of site disturbance. Strict compliance with the setback requirements in the approved variations would likely have hindered the achievement of these key environmental outcomes.

- *Vegetative screening requirement*

The PDA vegetative screening requirements of subclause 3(c), requiring the development to be screened from view from outside of the lot, by retention or planting of native vegetation, was also not being regularly achieved.

It appears this is primarily due to changing bushfire requirements since the introduction of the clause over 30 years ago. These include stricter requirements for Asset Protection Zone (APZ) management, wider vehicular access routes and turning heads to accommodate firefighting vehicles, and hard stand areas for access to firefighting water supplies. The street frontage and side boundary PDA setbacks now commonly form part of the APZ.

However, if APZs are located outside of setback areas and dense screening to hide buildings from view still required, the APZ and development envelopes would be pushed further into the site. The resultant longer access routes, and greater perimeter of development to be protected by an APZ would then disturb greater areas of vegetation. Siting development closer to the street also aids bushfire safety, aiding evacuation and increasing safety for firefighting operations.

In addition, the 10/50 bushfire clearing concessions introduced in 2014 also enabled some clearing of vegetation that may have previously been retained in setbacks to screen developments.

On lots transferred from LEP 2005, the character of the locality is already more urbanised, and screening of development to the extent required under the current PDA requirements is contrary to the character of the locality. It is preferable to site development closer to the

street and side boundaries, matching the existing character of the locality, and allow for retention of bushland at the rear of the site.

Therefore, while vegetative screening, to the intent originally envisaged by the PDA provisions, is not being achieved, in most circumstances sufficient landscaping is being achieved to retain a bushland setting. This is considered to be a more practicable outcome, particularly as other LEP controls already regulate development on the most visually sensitive sites. For example, on sites identified on the Scenic and Landscape Values Map, the Protected Area Scenic Quality and Protected Area Escarpment provisions of the LEP also apply, requiring the design of the development to avoid or minimise adverse impact on the identified scenic values. Clause 6.1(3) also requires consideration of the impact on the scenic attributes of the National Park, for development near the Blue Mountains National Park.

- *Clause construction*

Difficulties in interpreting the clause were also identified by both staff and applicants, with the objectives, wording around the single PDA requirement, and land to which the clause applies all creating confusion.

The wording of the exceptions clauses was also identified as difficult to interpret.

Intended Outcomes

The intended outcomes for proposed changes to clause 4.4B are to:

- Clarify and strengthen the objectives to better explain intention of the clause.
- Introduce PDA and large lot definitions to better explain what a PDA is and where the PDA requirements apply.
- Consolidate the mandatory heads of consideration into one subclause.
- Replace the screening requirements with bushland character requirements.
- Retain the exceptions clause for ancillary or incidental development to pre-existing dwellings but expand to allow these forms of development for dwellings approved under LEP 2005, where a PDA control did not apply.
- Tighten the cumulative clearing provision in the exceptions clause.
- Clarify the exceptions clause for lots where there is less than 750m² of land that is not ESL and tighten to allow a maximum PDA size of 750m² under the exceptions clause in these circumstances.
- Relocate setback requirements to Blue Mountains Development Control Plan 2015 (DCP 2015). The transfer of the PDA setback requirements to DCP 2015 will be accompanied by a required minimum 10m setback to all boundaries. The DCP will also provide a clear exceptions structure to the 10m minimum PDA setback, requiring a better environmental outcome to be achieved before any setback variation is permitted.

The intended outcome for changing the definition of Notional Development Area (NDA) is to strengthen protection on the most environmentally sensitive land (defined as ESL) and ensure all ESL is considered from the start of the design process, by amending the NDA definition so that all ESL is excluded at the beginning of the development application process.

The Table within Part 2 of this planning proposal provides further detail on how these intended outcomes will be achieved. The table also includes the wording of the existing clause and suggested wording of the amended clause for the Department's consideration.

PART 2 EXPLANATION OF PROVISIONS

Given the context of the Blue Mountains, being surrounded by a World Heritage National Park, and the unique nature of Clause 4.4B, suggested wording has been provided for the Department's consideration. The existing 4.4B clause wording, the Planning Proposal, its rationale, and suggested clause wording are detailed below.

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
1	<i>The objective of this clause is to prescribe the maximum size of land on which development is to be located for larger lots in response to the environmental capacity of the land.</i>	<p>The PDA control is unique to the Blue Mountains and clearer objectives are required to better explain the intent of the control. The intentions of Clause 4.4B include:</p> <ul style="list-style-type: none"> • Consolidate development into a single location within the lot to minimise bushland clearing and site disturbance on the site. • Set the maximum size of the development envelope on these sensitive sites, considering the environmental sensitivity of the land. The development envelope size is inversely proportional to the extent of environmentally sensitive land on the site. • Siting development outside of environmentally sensitive land, with the PDA identification process providing a tool to ensure up front identification of environmentally sensitive land, to inform design and siting of the development envelope as early as possible in the development application process. <p>These intentions are not achieved via other LEP or DCP controls and have been translated into objectives.</p> <p>Clearer objectives also provide better guidance also for any clause 4.6 variation where applicants seek to rely on compliance with the objectives to demonstrate strict compliance is unreasonable or unnecessary.</p>	<p>(1) <i>The objectives of this clause are to:</i></p> <ul style="list-style-type: none"> (a) <i>consolidate all development on a large lot within a single Principal Development Area (PDA), and</i> (b) <i>prescribe the maximum area of land within a large lot on which development may be located, in response to the environmental capacity of the land, and</i> (c) <i>restrict development on environmentally sensitive land, and</i> (d) <i>minimise the extent of bushland clearing and allow for restoration of disturbed bushland areas outside of the development location.</i>

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
2	<i>This clause applies to land in Zone C3 Environmental Management or Zone C4 Environmental Living.</i>	<p>Clause 4.4B will continue to apply to lots with an area greater than 4000m² of C3 or C4 zoned land as in the current control.</p> <p>However, under the current controls, it has not been clear that the clause only applies where the lot contains greater than 4000m² of C3 or C4 zoned land, where a lot has a split zoning.</p> <p>This clause is to be rewritten so that the zoning and area requirements are now contained in the one subclause, making interpretation easier for the user.</p> <p>The requirements have been incorporated into a new definition of “large lot” to clarify when the provision applies. This term is then used elsewhere in the clause and in the DCP as a common way of identifying these lots.</p> <p>A stand-alone definition of PDA is also proposed to better explain identify what the clause is required to achieve.</p>	<p>(2) <i>In this clause 4.4B:</i></p> <p>“Large lot” means a lot or lots within which the development is to be carried out, containing land with an area of at least 4,000 square metres that is zoned C3 Environmental Management or C4 Environmental Living.</p> <p>“PDA” means a principal development area, being the area of land within a large lot, within which all development, other than that specifically excluded under this clause, must be contained.</p>
3	<p><i>Development consent must not be granted for development on a lot to which this clause applies that has an area of at least 4,000 square metres unless the consent authority is satisfied that—</i></p> <p><i>a) the development will be located within a principal development area (the PDA) that complies with this clause, and</i></p> <p><i>b) the PDA will be appropriately sited on the lot, and</i></p>	<p>The amendments retain subclause (3) as the determinative clause but consolidates all heads of consideration into the PDA requirements in subclause (4).</p>	<p>(3) <i>Subject to subclauses (5) and (6)—development consent must not be granted for a proposed development on a large lot unless the consent authority is satisfied that the development will take place in a single PDA that complies with subclause (4).</i></p>

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
	<i>c) the development will be screened from view from outside the lot by the retention of existing vegetation or the planting of native vegetation on the lot.</i>		
4	<p><i>The PDA of the lot must meet the following requirements—</i></p> <p><i>a) must not contain environmentally sensitive land,</i></p> <p><i>b) if the width of the lot at the building line is less than 50 metres—must have boundary setbacks of at least 10 metres,</i></p> <p><i>c) if the width of the lot at the building line is at least 50 metres—must have boundary setbacks of at least 15 metres,</i></p> <p><i>d) if the lot has a notional development area of less than 2,000 square metres—must have a maximum area of 750 square metres, or the notional development area of the lot, whichever is greater,</i></p> <p><i>e) if the lot has a notional development area of 2,000 square metres or more—must have a maximum area of 2,000 square metres, or 25% of the notional development area of</i></p>	<p>To clarify the application of the PDA control, all heads of consideration are now contained within subclause (4).</p> <p>The PDA setback requirements are proposed to be shifted from the LEP to the DCP. While larger setbacks are important in most localities to retain a bushland character, often the most disturbed areas of the site, or those areas free of environmentally sensitive lands, are in the required setback area. Setback controls are frequently the subject of clause 4.6 variation requests which are upheld, and a review of the variations to the setback controls confirmed that these regularly approved variations achieved a better environmental outcome in terms of vegetation preservation and avoidance of ESL than would have been achieved via strict numerical compliance with the setback development standard.</p> <p>The extent of justifiable variations to the setback controls however could place the PDA clause itself in jeopardy. DCP 2015 provides a suitable mechanism to manage setback controls and allow for some flexibility to achieve optimal the siting of the PDA on a site without needing to report variations to the LPP.</p> <p>Subclause 4(d) contains the PDA numerical requirements, which have been tabulated into columns to improve the readability of the controls, with the introduction making it clearer that this provision is used to set the maximum PDA area. The column format also allows for a clearer expression of the purpose of the numerical controls in the words preceding the columns.</p>	<p>(4) <i>The PDA for a large lot must:</i></p> <p>(a) <i>provide setbacks appropriate to the site and context, and</i></p> <p>(b) <i>not include environmentally sensitive land, and</i></p> <p>(c) <i>be configured to allow either the retention of existing native vegetation or the planting of native vegetation as part of the development, that will conform with the bushland character of the locality in which the lot is situated, and</i></p> <p>(d) <i>have a maximum total area, to be determined based on the notional development area of the lot, as specified in the Table to this subclause</i></p>

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
	<i>the lot, whichever is greater, but not exceeding an area of 5,000 square metres.</i>		<p>Notional Development Area of the Lot</p> <p>Less than 750 m² or the notional development area, whichever is the greater</p> <p>2,000 m² or more 2,000 m² or 25% of the notional development area, up to a maximum of 5,000 m², whichever is the greater</p> <p><i>Note: 'Notional development area' and 'environmentally sensitive land' are defined in the LEP dictionary.</i></p>
5	<p><i>Despite subclause (3) (a), development consent may be granted to development on land to which subclause (3) applies that will not be located within a PDA that complies with this clause if—</i></p> <p><i>a) the lot was created before the commencement of this Plan, and</i></p> <p><i>b) the development is ancillary or incidental to a dwelling house that was erected before 27 December 1991, and</i></p> <p><i>c) any vegetation that is required to be cleared is not located on environmentally sensitive land, and</i></p>	<p>The intent of subclause (5) is to recognise that development which predates the introduction of the PDA clause in LEP 1991 may not be able to comply with the PDA requirements. It provides an alternative path to a clause 4.6 objection for development that is ancillary or incidental to an existing dwelling house erected in accordance with the criteria.</p> <p>There are two changes proposed to the subclause:</p> <ul style="list-style-type: none"> 4(b)(ii) proposes the addition of an exception for ancillary and incidental development to dwelling houses approved under LEP 2005. The exception clause was included in LEP 1991 as a concession to dwellings constructed before the clause was in existence. A similar situation has arisen in the translation from the Living- Bushland Conservation zone under LEP 2005 to the C4 Environmental Living Zone in LEP 2015. Under LEP 2005, there was no PDA clause and in particular, the setback requirements that apply to larger lots under the PDA clause did not apply to these developments. Therefore, the exceptions clause is to be expanded apply to dwellings approved under LEP 2005. 	<p>(5) <i>Development consent may be granted for a development that will not comply with subclause (3) if:</i></p> <p>(a) <i>the lot was created before this Plan commenced on 15 February 2016, and</i></p> <p>(b) <i>the proposed development is ancillary or incidental to the use of a dwelling house that was either:</i></p> <p>(i) <i>approved before 27 December 1991, or</i></p> <p>(ii) <i>approved under Blue Mountains Local Environmental Plan 2005, and</i></p> <p>(c) <i>any vegetation that is required to be cleared for the purpose of the proposed development is not located on environmentally sensitive land, and</i></p> <p>(d) <i>less than 50m² of vegetation will be cleared, and</i></p> <p>(e) <i>the total area of all development on the site will not exceed the maximum PDA size that</i></p>

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
	<p><i>d) the clearing of vegetation will be carried out on an area of less than 50 square metres, and</i></p> <p><i>e) the total area of land that is required to be cleared and is outside the PDA is no more than 5% of the notional development area.</i></p>	<ul style="list-style-type: none"> (4)(e) intends to avoid the cumulative environmental impact of multiple development applications for ancillary development by limiting the total area that can be cleared under an exceptions clause. The amended clause seeks to clarify its application and ensure that the addition of further development to a site under an exceptions pathway does not result in greater total clearing on the site does not exceed the maximum PDA size that could otherwise achieved on the site. 	<p><i>would otherwise apply to the lot under subclause 4(d).</i></p>
6	<p><i>Despite subclause (4) (a), a PDA may contain environmentally sensitive land if the lot contains less than 750 square metres of land that is not environmentally sensitive land and the consent authority is satisfied that—</i></p> <p><i>a) the PDA is suitable for the erection of a dwelling house, and</i></p> <p><i>b) the PDA will contain the minimum area, as is reasonably practicable, of environmentally sensitive land that is required to carry out the development, and</i></p> <p><i>c) the PDA will contain less than 750 square metres of environmentally sensitive land.</i></p>	<p>Some lots are so constrained that providing a PDA that does not contain any ESL may not be possible. However, residential development is permissible on the lot and no buyback provisions exist.</p> <p>The existing and proposed subclause recognises this situation and provides an alternative path to a clause 4.6 objection for on those lots which are so environmentally constrained that less than 750m² of the site is free of ESL.</p> <p>Under the exceptions clause, even if the PDA does contain some environmentally sensitive land, the PDA still needs to be sited to achieve an acceptable environmental impact (and satisfy clause 6.1(4) of LEP 2015), and satisfy the remaining PDA requirements in subclause 4(a).</p> <p>The subclause remains unchanged from the current provision, except that former Subclause (6)(c) has been revised to clarify that the maximum PDA area allowable under the exceptions clause is 750m².</p>	<p>(6) <i>Despite subclause 4(b), a PDA may contain environmentally sensitive land if the lot is so constrained by environmentally sensitive land that it has a notional development area less than 750m² and the consent authority is satisfied that:</i></p> <p><i>(a) the PDA, although it includes environmentally sensitive land, is otherwise suitable for the erection of a dwelling house, and</i></p> <p><i>(b) the PDA will contain the minimum area of environmentally sensitive land that is practically required to carry out the development, and</i></p> <p><i>(c) The maximum PDA size is 750m².</i></p>
7	<p><i>This clause does not apply to the following types of development—</i></p> <p><i>a) the subdivision of land,</i></p>	<p>No change to existing clause is proposed.</p>	<p>(7) <i>This clause does not apply to the following types of development:</i></p> <p><i>(a) the subdivision of land,</i></p> <p><i>(b) the clearing of vegetation required to establish an asset protection zone, or</i></p>

Clause	Exiting Clause Wording	Summary of Reasons and Intent for change	Suggested Clause Wording
	<p><i>b) the clearing of vegetation required to establish an asset protection zone,</i></p> <p><i>c) development for the purpose of providing vehicular access or public utility services.</i></p>		<p><i>(c) development for the purpose of providing vehicular access or public utility services.</i></p>

The current Notional Development Area definition, the rationale for the proposed change, and the suggested amended definition are detailed below.

Exiting Clause Wording	Proposed Changes - Summary of Reasons and Intent	Suggested Clause Wording
<p><i>Notional development area</i> means the area of a lot in Zone C3 Environmental Management or Zone C4 Environmental Living that is not any of the following—</p> <p><i>a) land identified as “Protected area—Slope constraint area” on the Natural Resources—Land Map that has a slope of more than 20%,</i></p> <p><i>b) land identified as “Protected area—Ecological buffer area” on the Natural resources—Biodiversity Map.</i></p>	<p>Changes in the definition of NDA to exclude all ESL provides an up front and more accurate identification of the development potential of the site.</p> <p>The proposed change in the definition of NDA to exclude all ESL would provide an earlier and more accurate identification of the development potential of the site.</p> <p>The proposed NDA definition, used in conjunction with the current sliding PDA area scale does not alter the maximum PDA attainable on the majority of sites which are primarily affected by slope constrained land, which is already excluded from the NDA definition.</p> <p>However, on the most highly constrained larger lots the change in definition will restrict the maximum size of the PDA. Given the environmental sensitivity of these sites, the smaller maximum PDA area available is considered to be an appropriate outcome.</p>	<p><i>Notional development area</i> means the area of land zoned C3 Environmental Management or C4 Environmental Living within the lot or lots on which the development is to be carried out, excluding any environmentally sensitive land.</p>

PART 3 JUSTIFICATION

This section of the Planning Proposal provides the rationale for the amendments and responds to questions set out in 'Local Environmental Plan Making Guideline', published by the Department of Planning and Environment in August 2023.

Section A - Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed LSPS, strategic study or report?

This proposal is consistent with continuous longstanding planning principles in the Blue Mountains City LGA that aim to minimise adverse environmental impacts through prescriptive controls relating to 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 associated with land uses are of upmost importance and form the backbone of planning aims and objectives in the local statutory instruments.

The lands to which the clause applies are generally located on the fringe of the developed areas of the Blue Mountains, usually interfacing with the National Park or bushland reserves which connect into the World Heritage area. The lots themselves are predominantly bushland and usually contain large tracts of environmentally sensitive land with limited development potential.

This Planning Proposal aims to improve the clarity and streamline the application of Clause 4.4B, while retaining the current balance of environmental protection and development potential achieved under the current clause. This review has been prompted by the number of Clause 4.6 variation requests arising from the PDA provisions and feedback from staff and applicants regarding interpretation and application of the PDA clause.

The Planning Proposal is also consistent with Council's Local Strategic Planning Statement (LSPS) which strategically considers living sustainably as a city within a World Heritage National Park. Specifically, Actions 1.11 and 2.13 outline that Council will review and update Blue Mountains Local Environmental Plan 2015 to enhance water sensitive urban design controls and the protection of native vegetation, both of which are key considerations in the outcomes of clause 4.4B.

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

Yes, a Planning Proposal is the best means of achieving the intended outcome.

The amendments proposed clarify and streamline the operation of the PDA clause (Clause 4.4B) while retaining and enhancing protection of environmentally sensitive land (ESL) as defined in LEP 2015.

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:

Table 2 – Consistency with Greater Sydney Region Plan objectives

Greater Sydney Region Plan	Consistency
Sustainability Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced	The proposal strengthens protection on the most environmentally sensitive land (ESL) and ensures all ESL is considered from the start of the design process, through amending the definition of notional development area.
Sustainability Objective 28 – Scenic and cultural landscapes are protected.	The proposal limits the development footprint in scenic and cultural landscape areas (including escarpments) and works in conjunction with a suite of other LEP and DCP controls to ensure built form outcomes which protect these values.

Western City District Plan

The Western City District Plan provides subregional objectives which stem from the Greater Sydney Region Plan. The document also provides a list of Planning Priorities, these priorities work together to create a liveable, vibrant Western City.

The Planning Proposal is consistent with the following planning priorities of the Western City District Plan:

Table 3 – Consistency with Western City District Region Plan planning priorities

Western City District Plan	Consistency
Sustainability Planning priority W14 – Protecting and enhancing bushland and biodiversity.	The proposal strengthens protection on the most environmentally sensitive land (ESL) and ensures all ESL is considered from the start of the design process, through amending the definition of notional development area.
Sustainability Planning priority W16 – Protecting and enhancing scenic and cultural landscapes.	The proposal limits the development footprint in scenic and cultural landscape areas (including escarpments) and works in conjunction with a suite of other LEP and DCP controls to ensure built form outcomes which protect these values.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy?

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 1 Living sustainably in the City within a World Heritage National Park.

The LSPS details Council's commitment to the careful management of development within the LGA, that is surrounded by a World Heritage National Park. This is reflected in significant and ongoing Council investment in environmental management programs and the stringent planning controls in Blue Mountains LEP 2015. Actions in the LSPS under Local Planning Priority 1, demonstrate how Council intends to live sustainably in a city within a World Heritage National Park.

This planning proposal delivers on these actions, by refining the existing Principal Development Area (PDA) provisions to better ensure development is sited in the most suitable location on the site, which minimises bushland disturbance and avoids development on environmentally sensitive land, and that identification and full consideration of environmentally sensitive land occurs at the very start of the development design process, to achieve sustainable development.

In addition, the PDA provision has been in place for larger bushland lots with residential development potential since the commencement of LEP 1991. The clause is a long standing policy position of Council which seeks to set the overall size of development on large lots based on the environmental sensitivity of the land; and restrict development on environmentally sensitive land.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

NA.

6. Is the Planning Proposal consistent with applicable SEPPs?

The following table documents the application and consistency with all State Environmental Planning Policies (SEPPs)

Note:

- ¹ **Not Relevant:** This SEPP does not apply to land within LEP 2015 Draft Amendment
- ² **Consistent:** This SEPP applies; LEP 2015 Draft Amendment meets the relevant requirements and is in accordance with the SEPP.
- ³ **Justifiably Inconsistent:** This SEPP applies; LEP 2015 Draft Amendment does not meet all the requirements or may be inconsistent with this SEPP as outlined following the table.

<u>State Environmental Planning Policies in force</u>		NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
SEPP	State Environmental Planning Policy (Biodiversity and Conservation) 2021		✓	
Chapter 6	Water Catchments		✓	
SEPP	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	✓		
SEPP	State Environmental Planning Policy (Housing) 2021	✓		
SEPP	State Environmental Planning Policy (Industry and Employment) 2021	✓		
SEPP	State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)	✓		
SEPP	State Environmental Planning Policy (Planning Systems) 2021	✓		
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	✓		
SEPP	State Environmental Planning Policy (Precincts- Western Parkland City) 2021	✓		
SEPP	State Environmental Planning Policy (Primary Production) 2021	✓		
SEPP	State Environmental Planning Policy (Resilience and Hazards) 2021	✓		
SEPP	State Environmental Planning Policy (Resources and Energy) 2021	✓		
SEPP	State Environmental Planning Policy (Sustainable Buildings) 2022	✓		
SEPP	State Environmental Planning Policy (Transport and Infrastructure) 2021	✓		

This Planning Proposal is consistent with all relevant SEPP's. A summary of compliance with certain SEPP's is provided below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This Planning Proposal is consistent with the Biodiversity and Conservation SEPP. This planning proposal does not contain provisions that would hinder the application of this SEPP. The Planning Proposal will contribute to the protection of water quality by reducing the size of development footprints and consistently assigning them to areas outside of environmentally sensitive land.

7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority? 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
- ² **Consistent:** This direction applies; LEP 2015 Draft Amendment meets the relevant requirements and is in accordance with the direction.
- ³ **Justifiably Inconsistent:** This direction applies, but LEP 2015 Draft Amendment does not meet all the requirements or may be inconsistent with this direction as outlined following the table.

Section 9.1 Ministerial Directions		NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
1. PLANNING SYSTEMS				
1.1	Implementation of Regional Plans		✓	
1.2	Development of Aboriginal Land Council land	✓		
1.3	Approval and Referral Requirements	✓		
1.4	Site Specific Provisions	✓		
1.4A	Exclusion of Development Standards from Variation	✓		
1.5	Parramatta Road Corridor Urban Transformation Strategy	✓		
1.6	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		
1.7	Implementation of Greater Parramatta Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		
1.8	Implementation of Wilton Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		
1.9	Implementation of Glenfield to Macarthur Urban Renewal Corridor	✓		
1.10	Implementation of Western Sydney Aerotropolis Plan	✓		
1.11	Implementation of Bayside West Precincts 2036 Plan	✓		
1.12	Implementation of Planning Principles for the Cooks Cove Precinct	✓		
1.13	Implementation of St Leonards and Crows Nest 2036 Plan	✓		
1.14	Implementation of Greater Macarthur 2040	✓		
1.15	Implementation of the Pyrmont Peninsula Place Strategy	✓		
1.16	North West Rail Link Corridor Strategy	✓		
1.17	Implementation of the Bays West Place Strategy	✓		
1.18	Implementation of the Macquarie Park Innovation Precinct	✓		
1.19	Implementation of Westmead Place Strategy	✓		
1.20	Implementation of the Camellia-Rosehill Place Strategy	✓		
1.21	Implementation of South West Growth Area Structure Plan	✓		
1.22	Implementation of the Cherrybrook Station Place Strategy	✓		
2. DESIGN AND PLACE				
3. BIODIVERSITY AND CONSERVATION				
3.1	Conservation Zones		✓	
3.2	Heritage Conservation	✓		

Section 9.1 Ministerial Directions		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
3.3	Sydney Drinking Water Catchments		✓	
3.4	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	✓		
3.5	Recreation Vehicle Areas	✓		
3.6	Strategic Conservation Planning	✓		
3.7	Public Bushland	✓		
3.8	Willandra Lakes Region	✓		
3.9	Sydney Harbour Foreshores and Waterways Area	✓		
3.10	Water Catchment Protection	✓		
4. RESILIENCE AND HAZARDS				
4.1	Flooding	✓		
4.2	Coastal Management	✓		
4.3	Planning for Bushfire Protection	✓		
4.4	Remediation of Contaminated Land	✓		
4.5	Acid Sulfate Soils			
4.6	Mine Subsidence and Unstable Land			
5. TRANSPORT AND INFRASTRUCTURE				
5.1	Integrating Land Use and Transport	✓		
5.2	Reserving Land for Public Purposes	✓		
5.3	Development Near Regulating Airports and Defence Airfields	✓		
5.4	Shooting Ranges	✓		
6. HOUSING				
6.1	Residential Zones	✓		
6.2	Caravan Parks and Manufactured Home Estates	✓		
7. INDUSTRY AND EMPLOYMENT				
7.1	Employment Zones	✓		
7.2	Reduction in non-hosted short-term rental accommodation period	✓		
7.3	Commercial and Retail Development along the Pacific Highway, North Coast	✓		
8. RESOURCES AND ENERGY ✓				
8.1	Mining, Petroleum Production and Extractive Industries	✓		
9. PRIMARY PRODUCTION ✓				
9.1	Rural Zones	✓		
9.2	Rural Lands	✓		
9.3	Oyster Aquaculture	✓		
9.4	Farmland of State and Regional Significance on the NSW Far North Coast	✓		

This Planning Proposal is consistent with all relevant Directions by the Minister as detailed below.

Direction 1.1 Implementation of Regional Plans

As outlined in Section B, this planning proposal is consistent with the Greater Sydney Regional Plan, particularly the sustainability objectives. The proposal strengthens protection on the most environmentally sensitive land (ESL) and ensures all ESL is considered from the start of the design process, through amending the definition of notional development area. The proposal limits the development footprint in scenic and cultural landscape areas (including escarpments) and works in conjunction with a suite

of other LEP and DCP controls to ensure built form outcomes which protect these values.

Direction 3.1 Conservation Zones

This Planning Proposal applies to land zoned C3 Environmental Management and C4 Environmental Living. The planning proposal strengthens protection on the most environmentally sensitive land (ESL) and ensure all ESL is considered from the start of the design process, through amending the definition of notional development area. As such, is consistent with the objectives of direction 3.1.

Direction 3.3 Sydney Drinking Water Catchments

This Planning Proposal applies to land zoned within the Sydney drinking water catchment. The proposal is consistent with Direction 3.3 in that consultation with WaterNSW has been undertaken as part of the preparation of this Planning Proposal.

An initial meeting between WaterNSW and Council officers was held in December 2023, where the broad intent of the PDA clause changes was discussed. Following this meeting, a formal referral was sent. Their final advice, dated 1 February 2024 (Attachment 1), outlines that WaterNSW has no objection to the Proposal and intended changes to the clause. The amendment is likely to have implicit water quality outcomes for those parts of the Blue Mountains LGA that are within the SDWC. This is because it effectively limits development disturbance and directs development footprints away from environmentally sensitive areas.

Water NSW also sought confirmation that ancillary development including stormwater management controls (raingardens, water tanks), on-site wastewater systems and effluent irrigation areas if proposed) would be located within the PDA. In response Council confirms that all forms of development, including all ancillary development is required to be located within the PDA, except for subdivision, clearing of vegetation for an asset protection zone and development for the purposes of providing vehicular access or public utility services, which are explicitly excluded under the current subclause 7. The above mentioned ancillary development examples from Water NSW are considered to be private utility services, and the PDA provision has consistently required these forms of development to be located in the PDA. No change to the current provisions of subclause 7, or additional explanatory notes are proposed in the LEP.

Water NSW also suggested that the Asset Protection Zone (APZ) might be included in the PDA, to enable the APZ to absorb some of the ancillary uses and impacts associated with the PDA. However, in practice the APZ is usually located partly within the PDA, extending outwards from the dwelling wall and including ancillary features such as private open space, effluent irrigation areas and raingardens, located within the PDA and having compatible vegetation management requirements. However, the APZ also may at times need to extend beyond the PDA, and commonly does include the side and street setbacks, which are outside of the PDA. To change the definition to require the entire APZ to be within the PDA, would then mean it couldn't encroach into side and street setback areas and the entire PDA envelope would be pushed further into the site, resulting in greater bushland disturbance and greater bushfire risk to firefighters and evacuating residents. Therefore no further changes to the proposed PDA amendments are considered necessary.

The Gateway Determination issued on 12 April 2024 required that the planning proposal was referred to WaterNSW again. On 14 May 2024 WaterNSW confirmed that they were supportive of the Planning Proposal (attachment 2). WaterNSW also provided additional comments confirming that the Planning Proposal satisfactorily addressed the matters raised previously. A minor typographic error was also identified in the suggested clause wording section for subclause 3, which has been corrected in this current version of the Planning Proposal.

Section C - Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

No. The proposal endeavours to continue to protect the unique environment of the Blue Mountains including critical habitats, threatened species, populations, ecological communities by setting the overall size of development on large lots based on the environmental sensitivity of the land; consolidating disturbance impacts within a single specified development envelope; and locating the envelope outside environmentally sensitive areas.

9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

LEP 2015 contains detailed controls for the protection of the environment, and nothing in this amendment seeks to diminish or contradict these provisions.

The PDA provisions in clause 4.4B establish the maximum size and location of a development envelope (the PDA) on lots containing more than 4000m² of land zoned C3 or C4 and require the location of development within a single development area, located outside of environmentally sensitive lands. No other LEP or DCP provisions can achieve these outcomes.

Once the development envelope is established through the PDA controls, other planning provisions in LEP 2015 and DCP 2015, then determine the physical design of development within the PDA, to ensure that the built form will be suitable for the locality and avoid adverse environmental and visual impacts.

The PDA setback requirements are proposed to be shifted from the LEP to DCP 2015. While larger setbacks are important in most localities to retain a bushland character, often the most disturbed areas of the site, or those areas free of environmentally sensitive lands, are in the required setback area. The PDA setback controls are frequently the subject of clause 4.6 variation requests which are upheld.

A review of the variations to the setback controls confirmed these regularly approved variations achieved a better environmental outcome in terms of vegetation preservation and avoidance of ESL than would have been achieved via strict numerical compliance with the setback development standard.

DCP 2015 provides a suitable mechanism to manage setback controls and allow for some flexibility to achieve optimal the siting of the PDA on a site.

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

The proposal clarifies the existing PDA provisions and provides a suitable mechanism to manage setback controls and allow for some flexibility to achieve optimal siting of the PDA on a site without needing to report variations to the LPP. This will result in better environmental outcomes and ensure all ESL is identified and properly considered in the design process to avoid the need for later amendments.

Submission requirements for development applications already require identification of ESL as part of the site analysis, so the amendment does not introduce new requirements, but seeks to apply existing controls at the earliest possible stage of the development design, by establishing a development envelope (the PDA) which avoids impact on ESL. The proposal maintains an appropriate level of development potential

on all affected lands, allowing for modest development, commensurate to the environmental sensitivity of the land.

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

Section D - Infrastructure (Local, State and Commonwealth)

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

This planning proposal seeks to restrict development on large lots by setting the overall size of development on large lots based on the environmental sensitivity of the land; consolidating disturbance impacts within a single specified development envelope; and locating the envelope outside environmentally sensitive areas. Therefore, this planning proposal is not likely to increase the demand for public infrastructure.

Section E – State and Commonwealth Interests

12. What are the views of state and federal public authorities and government agencies consulted in order to inform the gateway determination?

Consultation with other State and Commonwealth public authorities has been 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.

Condition 2 of the Gateway Determination required consultation with the following authorities under section 3.43(2)(d) of the Act and/or to comply with the requirements of the applicable directions of the Minister under section 9 of the EP&A Act:

- NSW Rural Fire Service – required prior to public exhibition of the Planning Proposal
- WaterNSW

Consultation with both agencies was initiated via the NSW Planning Portal on 16 April 2024, with the closing date for comments being the 24 May 2024.

WaterNSW provided comments and was supportive of the Planning Proposal.

The NSW Rural Fire Service did not provide any comments. As outlined in the above response to Ministerial Direction 4.3 *Planning for Bushfire Protection*, the Planning Proposal complies with the requirements of this direction.

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 available 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 as below:

December 2023	Consultation with WaterNSW
January 2024	Planning Proposal reported to the Local Planning Panel for advice
February 2024	Planning Proposal reported to the Council for endorsement
March 2024	Submission of Planning Proposal to the Department for 'gateway review' of draft Amendment to LEP 2015
12 April 2024	Gateway determination issued
April-May 2024	Consultation with the NSW Rural Fire Service and WaterNSW
June-July 2024	Public exhibition of draft Amendment to LEP 2015
July- August 2024	Council review of submissions to draft Amendment to LEP 2015
October - November 2024	Report prepared for the Council to consider the result of the community consultation including any changes to this amendment.
November-December 2024	Planning Proposal and relevant supporting information forwarded to PCO to be made under delegation.
April 2025	Draft Amendment to LEP 2015 to be made. Gateway determination requires completion of the LEP 12 Months from the date of the Gateway Determination on 12 April 2024

The above is based partly on Table 2 in the 'Local Environmental Plan Making Guideline', published by the Department of Planning and Environment in August 2023.



1 February 2024

Contact: *Stuart Little*
Telephone: 0436 948 347
Our ref: D2024/7028

Michelle Maher
Program Leader Strategic Planning
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Dear Ms Maher,

I refer to your email of 11 January 2024 providing a Planning Proposal 'Principal Development Area Amendment' (Version 1.0) (January 2024) to support proposed changes to the Principal Development Area (PDA) clause under clause 4.4B of the Blue Mountains Local Environmental Plan 2015 (LEP).

WaterNSW's main interest in the Proposal is in relation to protecting water quality in the Sydney Drinking Water Catchment (SDWC). We understand that the intention of the amendment is to refine the operation of the PDA clause to minimise disturbance impacts and the extent of development footprints. This implicitly supports the protection water quality.

Background

Water NSW provided an interim response to the matter on 21 December 2023 (our ref: D2023/167577), although at that time we did not have the benefit of a full Planning Proposal. In that correspondence, we noted that we did not object to the amendment but suggested further clarification was required regarding the interaction of the PDA (as defined) with Asset Protection Zones (APZs). Our comments on the Planning Proposal herewith have been prepared taking into our earlier comments on the proposed amendment. We note that the intended clause amendments have not materially changed since our initial review.

Scope

The Proposal concerns refinements to clause 4.4B of the LEP, only affecting land zoned C3 Environmental Management and C4 Environmental Living. The current clause seeks to confine the overall size of development on large lots, consolidate the development into a single defined area, and avoid environmental sensitive land. However, setback provisions are currently compromising the ability to optimise environmental outcomes.

Key changes to the clause include:

- clarifying and strengthening the objectives of the clause
- including definitions for terms such as 'large lot' and 'PDA' in the clause and revising the definition of 'notional development area' (NDA) for the purposes of the LEP dictionary

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- relaxing the current setback distance controls by shifting these from the LEP to the Development Control Plan (DCP). This allows greater flexibility in the setback requirements without compromising the integrity of the LEP clause when variations are required. This will also enable the PDA to encroach onto setback areas if these areas are more disturbed than other areas on site
- containing the development to a single PDA and requiring the PDA to comply with certain conditions. These relate to the provisions of setbacks, the exclusion of environmentally sensitive land, the retention or planting of native vegetation to conform with the bushland character of the locality. A cap on the PDA footprint is also proposed based on the applicable NDA for the lot
- including additional provisions in the exceptions clause (subclause (5)) to include ancillary and incidental development to dwelling houses erected and approved under the LEP 2005. The alternative pathway for dwellings erected before 27 December 1991 would be retained (as currently exists). A new provision would also cap the size of cumulative impacts allowed under the exceptions clause
- including an alternative pathway for situations where sites are so constrained there is no opportunity other than for the PDA to contain environmentally sensitive land. This is as currently occurs although PDA sizes would now be capped at 750 m², and
- retaining the provisions that restrict the clause from applying to subdivision and which exclude clearing for APZs, vehicular access or public utility services from the scope of the clause.

Assessment

WaterNSW has no objections to the Proposal and intended changes to the clause. The amendment is likely to have implicit water quality outcomes for those parts of the Blue Mountains LGA that are within the SDWC. This is because it effectively limits development disturbance and directs development footprints away from environmentally sensitive areas.

As indicated in our previous correspondence, our understanding is that any ancillary or incidental development for stormwater management, on-site wastewater systems and effluent irrigation areas (if proposed) would be required to be included in the PDA.

Our understanding is that Council is seeking to prepare a Draft PDA Guide to support the amendment. This is currently not referenced in the Planning Proposal. The Proposal may benefit by outlining the range of ancillary development types that need to be taken into account when determining the PDA. Presumably this would include stormwater management controls (raingardens, water tanks), on-site wastewater systems and effluent irrigation areas (if proposed).

The clause and new proposed PDA definition specifically excludes APZs. As raised in our previous correspondence, this may inadvertently mean that APZs continue to operate separately leaving the PDA to be defined exclusive of the APZ area. This may also inhibit the APZ from absorbing and containing some of the impacts associated with ancillary development anticipated by the PDA clause. This could create a larger cleared areas than what is actually needed to protect and sustain large lot residential development.

Council may wish to further explore the PDA definition with respect to APZs, and whether the clause may benefit from additional flexibility to enable APZs to absorb some of the

ancillary uses and impacts associated with the PDA where these do not compromise the ability of APZs to provide for bushfire safety.

Direction 3.3. Sydney Drinking Water Catchment

The Proposal provides a consideration of s 9.1 Direction 3.3 Sydney Drinking Water Catchment, referencing our earlier advice provided in December 2023.

Having regard to the provisions of Direction 3.3 and comments made in our previous correspondence, we make the following comments:

- We believe the amendment is consistent with the overall objective of Direction 3.3 in providing for healthy catchments and protect water quality in the SDWC.
- The proposed refinements to the PDA clause are consistent with Part 6.5 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP) including the objective of providing 'healthy water catchments that will deliver high quality water to the Sydney area while also permitting compatible development' (see s 6.58 of the B&C SEPP). Development in the SDWC is required to have a neutral or beneficial effect (NorBE) on water quality and be consistent with the [Neutral or Beneficial Effect on Water Quality Assessment Guideline](#).
- The consideration of water quality (including groundwater) risks to any waterways occurring on or adjacent to the site is generally a site-specific requirement applying to spot rezonings. The proposed changes indirectly help protect water quality for the reasons outlined above and by keeping impact areas outside of environmentally sensitive land.
- Strategic Land and Water Capability Assessments are not relevant in this circumstance as they are designed to inform spot rezonings rather than broad LEP clauses.
- The requirement to zone land within Special Areas as specified in the Direction is not relevant in this circumstance. For any Special Areas in private land in the LGA that is zoned C3 or C4, the proposed changes will help protect water quality.

We ask that Council keep us updated regarding the progress of this Planning Proposal and advise us if further changes to the clause arise through the Gateway process. We also ask to be advised when the Proposal is publicly exhibited. Further correspondence should be directed to environmental.assessments@waternsw.com.au.

If you have any questions regarding this letter, please contact Stuart Little at stuart.little@waternsw.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alison Kniha", with a long horizontal stroke extending to the right.

ALISON KNIHA
Catchment Protection Planning Manager

waternsw.com.au



14 May 2024

Contact: *Stuart Little*
Telephone: *0436 948 347*
Our ref: *D2024/33656*

Ms Debbie Pinfold
Senior Strategic Planner
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Dear Ms Pinfold,

RE: Blue Mountains LEP 2015 PDA Clause Amendment PP-2024-491

I refer to Council's referral of 16 April 2024 regarding the Planning Proposal for the Draft Blue Mountain Local Environmental Plan 2015 (LEP) Amendment 20 concerning the Principal Development Area (PDA) Amendment (clause 4.4B of the LEP). WaterNSW has been previously consulted on this matter and provided advice in December 2023 (Our ref: D2023/167577) and February 2024 (Our ref: D2024/7028).

We note that Clause 4.4B only affects larger sized lots ($\geq 4,000 \text{ m}^2$) on land zoned C3 Environmental Management and C4 Environmental Living. The Proposal seeks to further refine the operation of clause 4.4B to improve its efficacy, reduce disturbance impacts and deliver better environmental outcomes. A full description of the clause, the proposed changes and the justification for those changes is provided in Part 2 (pp. 8-13) of the Proposal. We note that the proposed amendments have not materially changed since we last provided advice in February.

WaterNSW's main interest in the Proposal is in protecting water quality within the Sydney Drinking Water Catchment (SDWC). The Proposal is likely to have implicit benefits to water quality in the SDWC by further reducing development footprints and associated disturbance impacts, and by directing development footprints away from environmentally sensitive land.

The Proposal includes a consideration of s 9.1 Ministerial Direction 3.3. Sydney Drinking Water Catchment by summarising and responding to issues raised in our February 2024 advice. An assessment of the Proposal against the specific requirements of Direction 3.3 is included in our February response, which is included in the Proposal (pp. 24-26). We also note the Proposal's consistency with Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (p.17). Part 6.5 of Chapter 6 is relevant to the SDWC.

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Overall, WaterNSW is supportive of the Planning Proposal. Specific comments on certain water quality aspects of the Proposal are provided in Attachment 1.

If you have any questions regarding this letter, please contact Stuart Little at stuart.little@waternsw.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alison Kniha", with a long horizontal stroke extending to the right.

ALISON KNIHA
Environmental Planning Assessments & Approvals Manager

ATTACHMENT 1 – ADDITIONAL COMMENTS

Relationship of PDA to Ancillary Uses including Water Quality Protection Control Measures

The Proposal (p.20) includes reference to our previous submissions and an earlier on-line meeting with Council staff regarding the proposed clause 4.4B amendments. Our February 2024 correspondence noted our understanding to be that the PDA would contain stormwater management and wastewater control and treatment measures where these were required.

The Planning Proposal clarifies that all forms of development including ancillary uses such as raingardens, water tanks and on-site wastewater effluent systems and effluent irrigation areas, would be located within the PDA. The only exceptions are subdivision, clearing of vegetation for bushfire Asset Protection Zones (APZs) and development for vehicular access and public utility services as described in subclause 7. We note the Proposal's explanation that no further change to the current provisions of subclause 7 or additional explanatory notes are required to further clarify or address this matter.

Relationship of PDA to APZs

The Proposal (p.20) refers to our February 2024 correspondence that considered the relationship of APZs to the PDA. We would like to clarify that we were seeking an outcome whereby APZs could overlap with the PDA. Our concern was whether the wording of subclause 7 operated as an outright prohibition, excluding APZs (or any part thereof) from being able to overlap with the PDA area, creating larger cleared areas than necessary. This appears not to be the case. The Proposal explains how APZs often overlap with the PDA extending outwards from a dwelling. It also clarifies that APZs are not confined to the PDA as often larger APZs are required extending beyond the PDA to encompass side and street setbacks. Essentially, APZs can overlap with the PDA without being confined to it. We support this approach and note that this reflects the outcome we were seeking.

Our February correspondence suggested possible further exploration of the PDA definition to enable APZs to be able to absorb some of the ancillary uses and impacts associated with the APZ. This was really about the APZs being able to overlap with the PDA area as described above. The Proposal explains how confining APZs to the PDA would result in increased environmental disturbance and compromise bushfire safety outcomes. We support the inclusion of this explanation and clarify that this was not our intention.

Other

The 'suggested clause wording' for subclause 3, on bottom of page 9, refers to "subclauses (5) and (d)" – it is unclear what subclause "(d)" is in reference to. This may be in reference to subclause (4)(d)? This provision warrants further clarification.