

ITEM NO: 9

SUBJECT: AMENDMENT 23 TO LEP 2015 – THE CLARENDON AND HERITAGE
HOUSEKEEPING PLANNING PROPOSAL

FILE NO: F16021 - 24/229302

Delivery Program Link

Principal Activity: Live

Service: City Wide Strategic Planning Service

Recommendations:

1. *That the Council endorses the draft Planning Proposal, prepared in accordance with section 3.33 of the Environmental Planning and Assessment Act 1979, for Blue Mountains Local Environmental Plan 2015 Amendment 23 (The Clarendon and Heritage Housekeeping) be submitted to the Department of Planning, Housing and Infrastructure (the Department) requesting a Gateway Determination (Enclosure 1);*
 2. *That the Council notes the advice provided by the Local Planning Panel on the draft Planning Proposal for Blue Mountains Local Environmental Plan 2015 Amendment 23 (The Clarendon and Heritage Housekeeping);*
 3. *That the Council processes the Planning Proposal in accordance with the Gateway Determination issued under the provisions of Section 3.34 of the Environmental Planning and Assessment Act 1979;*
 4. *That the Council receives a report, subject to Gateway Determination and at the conclusion of the public exhibition period, to enable consideration of submissions made to the draft Planning Proposal for Blue Mountains Local Environmental Plan 2015 (Amendment 23); and*
 5. *That the Council delegates to the CEO or her delegate the authority to make minor amendments to the adopted draft Blue Mountains Local Environmental Plan 2015 (Amendment 23) that may arise after the formal adoption by the Council of this planning proposal, subject to such amendments maintaining the policy intent of the draft planning proposal.*
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Report by A/Director Environment and Planning Services:**Reason for report**

This report seeks the Council's endorsement to submit a planning proposal to the Department of Planning, Housing and Infrastructure (the Department) for draft Amendment 23 to Blue Mountains Local Environmental Plan 2015 (LEP 2015), to include The Clarendon as a local heritage item under LEP 2015 and make minor housekeeping amendments to a small number of existing local heritage items.

Background

The Clarendon is a significant building on the edge of the Katoomba town centre. The site is currently not included as a local heritage item under the LEP 2015 or listed within a Heritage Conservation Area.

During May 2024, it was identified that the site had been subject of significant unauthorised works. The lack of current heritage protection over The Clarendon site presents substantial risk to the building and its potential heritage significance, particularly given the recent unauthorised works.

A report to the ordinary Council meeting of 30 July 2024 recommended the issue of an Interim Heritage Order on the Clarendon. Council resolved:

1. *That the Council issues an interim Heritage Order in accordance with s.25 of the Heritage Act 1977, over The Clarendon Guesthouse and Theatre (The Clarendon) at 68 Lurline Street Katoomba such that appropriately detailed heritage assessments can be completed to determine whether or not the site should be listed as a heritage item in the Blue Mountains Local Environmental Plan;*
2. *That the Council forwards a copy of this report and notice to the State Government for inclusion in the next Government Gazette;*
3. *That once, the Interim Heritage Order is notified in the Government Gazette, Council in accordance with section 28 of the Heritage Act 1977:*
 - a) *places a notice in the Blue Mountains Gazette and on Council's website within 7 days of the Gazette notifying of the issue of the Interim Heritage Order*
 - b) *notifies the property owner and issues a copy of the Interim Heritage Order to the property owner;*
4. *That following the making of the Interim Heritage Order, the Council commissions an independent peer review of the Council's heritage assessment, to confirm the heritage significance of the site and building, against the NSW Heritage criteria; and*
5. *That the Council receives a future report, on the results of the heritage assessments and with a recommendation on whether or not the site should be listed as a heritage item in the Blue Mountains Local Environmental Plan via a Planning Proposal.*

[Minute No. 182]

Interim Heritage Order and Independent Heritage Assessment

In line with the above resolution from July 2024, Council placed an Interim Heritage Order (IHO) on 'The Clarendon'. The IHO was listed in the NSW Government Gazette, on Friday 2 August 2024 (Listing Number LC-2024-296-9) and will be in place and have effect for 12 months.

The IHO ensures that the building is protected for the 12-month period, enabling appropriately detailed heritage assessment to be undertaken to determine whether or not the site should be listed as a local heritage item under Blue Mountains LEP 2015.

In accordance with Item 4 of the above resolution, Council engaged heritage consultancy firm, Architectural Projects to prepare an independent heritage assessment. This assessment found that the building has historic, associational, aesthetic, social rarity and representative significance at a local level, and as such is suitable for inclusion of the LEP as a local heritage item.

The independent heritage assessment by Architectural Projects was received by Council in October 2024. The independent assessment identified the suitability of 'The Clarendon and interiors' at 68 Lurline Street, Katoomba, for listing as a local heritage item on Council's Local Environmental Plan 2015, which aligns with Council's own assessment prepared to support the Interim Heritage Order.

The findings of the Independent Heritage Assessment of The Clarendon were presented to the Ordinary Council Meeting on 26 November 2024. Council resolved:

1. *That the Council receives the Independent Heritage Assessment of The Clarendon at 68 Lurline Street, Katoomba and notes that it identifies the site as suitable for inclusion within the Local Environmental Plan as a local heritage item.*
2. *That the Council prepares a Planning Proposal to amend the Blue Mountains Local Environmental Plan 2015 to add The Clarendon at 68 Lurline Street, Katoomba as a local heritage item.*
3. *That the Council receives a future report with a draft Planning Proposal to amend Schedule 5 of the Blue Mountains Local Environmental Plan 2015, for the local heritage listing of The Clarendon at 68 Lurline Street, Katoomba, alongside some minor heritage housekeeping amendments.*

[Minute No. 277]

This report responds to Items 2 and 3 of the above resolution of Council from 26 November 2024.

Planning Proposal: Local Heritage Listing of 'The Clarendon' and Minor Heritage Housekeeping Amendments

In response to the Council's draft heritage assessment and inventory sheet, and confirmation of local heritage significance via an independent heritage assessment, it is proposed to include 'The Clarendon and interiors' as a local heritage item within Schedule 5 of Blue Mountains LEP 2015. As referenced above, the independent heritage assessment found that 'The Clarendon' has historic, associational, aesthetic, social rarity and representative significance at a local level, and as such is suitable for inclusion of the LEP as a local heritage item.

This is detailed and assessed within the draft Planning Proposal provided at Enclosure 1. The draft Planning Proposal is supported by the independent heritage assessment as required by the IHO process, relevant Council reports and resolutions (26 November 2024 [Minute No.227] and 30 July 2024 [Minute No.182]), and a final draft inventory sheet. This Planning Proposal has been prepared in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Department of Planning and Environment publication, NSW Local Environmental Plan Making Guideline (August 2023).

The draft Planning Proposal explains the intended effect of and justification for proposed amendments to Schedule 5 of Blue Mountains Local Environmental Plan 2015 (LEP 2015). In addition to the inclusion of one (1) proposed new heritage item – 'The Clarendon and interiors', it is also proposed to make minor housekeeping amendments to the details of thirteen (13) other existing heritage items, involving corrections of existing inconsequential errors to the names, addresses, property descriptions or the Heritage Maps of existing heritage items listed within the Blue Mountains LEP 2015 (LEP 2015). Item 3 of the 26 November 2024 Council resolution foreshadowed the inclusion of these minor heritage housekeeping amendments in the draft Planning Proposal. Two of these items have been included at the request of WaterNSW following required consultation. This is further detailed below.

Consultation with WaterNSW

As part of the preparation of the draft Planning Proposal, Council has consulted with WaterNSW as required by the Local Planning Directions of the Department of Planning Housing and Infrastructure.

Water NSW has requested that two currently listed local heritage items (Greaves Creek Dam in Blackheath, and Cascade Creek Dams in Katoomba, both owned by Water NSW) be modified by minor amendments to the mapping and property descriptions as part of this Planning Proposal. They have provided preferred mapping curtilages and property descriptions for the heritage components of the assets. This work concludes ongoing negotiations with WaterNSW regarding the heritage mapping of the two items that commenced during the Heritage Review (Amendment 5 to LEP 2015).

Council's heritage staff have undertaken a review of the proposed mapping amendments and have no objection given the minor nature of these changes. Council is seeking concurrence for the mapping changes from Sydney Water as part of the consultation processes.

WaterNSW have no substantive issues with the remainder of the Planning Proposal.

Local Planning Panel Advice

As required by section 9.1 of the *Environmental Planning and Assessment Act 1979*, the draft Planning Proposal was referred to the Blue Mountains Local Planning Panel (the Panel) for advice. The Panel considered the matter at its meeting of 18 December 2024.

The Panel supported the proposed heritage listing of 'The Clarendon and interiors' and the heritage housekeeping amendments which also form part of the draft Planning Proposal for Amendment 23 to LEP 2015, and recommended that Council proceed with the Planning Proposal.

Timeline for Planning Proposal (LEP Amendment)

Should the Council endorse the draft Planning Proposal, a Gateway Determination will be sought from the Department of Planning, Housing and Infrastructure.

As the Interim Heritage Order expires on 2 August 2025, Council will be seeking expedition of the Gateway Determination, with the intent of ensuring that Amendment 23 to LEP 2015 is made by this date, and the heritage protections for The Clarendon and its interiors is secured. It is expected that the public exhibition is likely to occur in March 2024, depending on the timing of the Gateway Determination.

It is therefore anticipated that the final report back to Council outlining the results of the public exhibition would occur in April or May 2025.

Effects	Positive	Negative
Environmental	<p>The recommendations of this report will result in a positive environmental outcome through the proposed local heritage listing of The Clarendon, which protects the building itself, the historical and visual environment of Katoomba, and assists in reducing environmental waste, by encouraging adaptive re-use of existing fabric.</p> <p>The housekeeping amendments aim to update heritage details of existing listed items, which will help facilitate the appropriate application of heritage provisions.</p>	Nil
Social	<p>The Independent Heritage Assessment has confirmed the social significance of the site and supports protecting the social value of The Clarendon as an entertainment venue. The future Planning Proposal to list the site will protect this social value.</p> <p>The heritage housekeeping amendments provide the community with updated information on the affected sites.</p>	Nil

Effects	Positive	Negative
Economic	<p>Economic values are preserved through the retention of the heritage value of the site, that generally leads to growth. The retention of the site as a guesthouse and entertainment venue supports sustainable tourism within Katoomba.</p> <p>The housekeeping amendments aim to update heritage details of existing listed items, which assist in the orderly and efficient application of Council's Heritage provisions.</p>	Heritage listings can be perceived to have negative impacts, as they may restrict some development options. However, if managed well, heritage values and authenticity can be a positive economic contributor.
Governance	<p>Proceeding from an Interim Heritage Order to a Planning Proposal for the heritage listing of the site within Blue Mountains Local Environmental Plan 2015, follows best practice where an item is found to meet local significance criteria, demonstrating good governance. The heritage housekeeping amendments which ensure up to date information is included in the LEP demonstrates good governance.</p> <p>The planning proposal will be prepared in accordance with the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) and the Department of Planning and Environment publication, NSW Local Environmental Plan Making Guideline (August 2023).</p>	Nil

Financial implications

There are no financial implications resulting from the recommendations in this report. All work is within the operational budget for the current financial year.

Legal and risk-management issues for the Council

There are no legal or risk management implications for Council in adopting the recommendations of this report. The usual legal processes are available to the owner of the subject property, similar to those available for development proposals.

External consultation

Architectural Projects Pty Ltd were engaged to complete the Independent Heritage Assessment of The Clarendon Hotel.

Consultation was undertaken with the property owner following notification of the Interim Heritage Order. A copy of the Independent Heritage Assessment was also provided to the property owner.

Owners affected by the heritage housekeeping amendments have been notified of the planning proposal prior to its reporting to the Council meeting, to provide an opportunity to make their views known at the meeting.

WaterNSW was also consulted on the draft Planning Proposal as detailed earlier in this report.

Alignment with Delivery Program and/or Operational Plan

The recommendations in this business paper are aligned with the Delivery Program 2022–2026 key direction *Live*, as follows:

- Objective 4.1 *City Planning guides sustainable urban renewal while maintaining the distinctive equality of our towns and villages;*
- Strategy 4.1.b *Preserve, maintain and enhance the City's unique character, local history and it's built, natural and cultural heritage, and*
- Principal Activity D40111.01 *Support conservation of local heritage.*

Conclusion

A draft Planning Proposal - Amendment 23 to LEP 2015 has been prepared to list The Clarendon and interiors as a local heritage item, within Schedule 5 of Blue Mountains Local Environmental Plan 2015. The draft Planning Proposal also seeks to make several minor housekeeping amendments to thirteen (13) existing heritage items.

It is recommended that the Council endorses the draft Planning Proposal to be submitted to the NSW Department of Planning, Housing and Infrastructure for Gateway Determination. Subject to a favourable Gateway Determination, the Planning Proposal will then be placed on public exhibition in line with Council's Community Participation Plan and the Gateway Determination conditions.

Following public exhibition and a public hearing being held, a report will be brought back to Council on the outcomes of exhibition and the steps required to finalise the LEP amendment.

ATTACHMENTS/ENCLOSURES

1	Council report enclosure - Planning Proposal The Clarendon and Heritage Housekeeping with attachments	25/4597	Enclosure
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