



Blue Mountains Draft Local Environmental Plan 2013

Information Sheet 3

Beginner's guide to the Draft LEP (DLEP) with a focus on environmental issues

This information has been compiled from the Blue Mountains City Council's series of Fact Sheets on the DLEP. We encourage people to read these Fact Sheets in detail once they have read this guide. You will find the Fact Sheets and the Draft Local Environmental Plan itself at <http://bluemountainshaveyoursay.com.au/draftlep2013> (look under 'Library' for Fact Sheets).

The DLEP is on public exhibition until 5th March, 2014. You need to get your submission in by that date. See our other information sheets (as they become available) for an analysis of the contents of the DLEP and a guide to making a submission.

What is the relationship between the Draft Blue Mountains Local Environmental Plan 2013 and the State government's proposed new planning laws?

A lot of people think the Draft LEP and the proposed new state planning laws are one and the same thing because they are happening at the same time. Throughout 2013, the Blue Mountains Conservation Society has been running campaigns and public meetings/rallies on both the DLEP and the proposed planning laws. The timing of the new LEP for the Blue Mountains and the new state-wide planning laws is purely a coincidence.

Of course, state planning laws and policies drive planning in local government areas like the Blue Mountains. For example, it was the State government's *Draft Metropolitan Strategy for Sydney to 2031* that contained the idea of turning the lower Blue Mountains into an extension of Penrith through the designation of Faulconbridge downwards as a Metropolitan Urban Area.

But for the sake of this exercise, just put aside any thoughts about the proposed new state planning laws. We don't even know yet what the final content of the new planning laws will be. The planning Bill was heavily amended by the upper house of the NSW parliament in late 2013 and these amendments were rejected by the lower house. The Bill is likely to come back to parliament in February or March 2014 when you are sure to start hearing about it again.

Right now it is important to focus solely on the Draft Blue Mountains Local Environmental Plan 2013.

What is a Local Environmental Plan?

A Local Environmental Plan (LEP) is a legal document that controls what land can be used for and how it can be developed. Each local government area in NSW has its own LEP. Local Councils prepare LEPs but the NSW government has to approve them.

Currently, two main LEPs control land use and development in the Blue Mountains: LEP 1991 (covering areas on the edges of the townships at the urban-bushland interface) and LEP 2005 (covering urban areas in the townships). Starting in 2006 the State government has instructed all Councils in NSW to prepare a new LEP based on a standardized LEP template. Accordingly, the Blue Mountains City Council has consolidated LEPs 1991 and 2005 into the draft Standard Instrument Blue Mountains LEP 2013 which is currently on public exhibition.

What does a Local Environmental Plan contain?

A Local Environmental Plan comprises a written instrument which is a legal document that contains details about the zoning of land and how land can be developed. An LEP also includes a Land Use Table (summarising permitted and prohibited development in each zone), and accompanying maps. These maps show the zones applying to land, the environmental constraints on development of the land (e.g. presence of watercourses, significant vegetation, steep slope, scenic areas etc) and areas where particular development standards (such as building height and setback, minimum lot sizes for subdivision etc) apply.

How does an LEP control development and protect the environment?

An LEP controls development and protects the environment through:

- the application of a zone to each property that determines what land uses are allowed, such as residential, commercial, environmental protection or rural. Each zone specifies what land uses are prohibited and permitted, and also has objectives listed. A property may have more than one zone applied to it. For example, one zone on a block may allow a house while another zone may restrict development on a more environmentally sensitive part.
- the designation of certain land as a 'protected area' applied through mapping e.g. vegetation constraint and ecological buffer areas, riparian land, bushland between towns etc and other provisions.
- the application of other development controls to land e.g. development standards that restrict building height and establish the minimum lot size allowed for subdivision etc.

How is the application of zones and development controls to particular land determined?

The application of zones, protected areas and development controls is determined by:

- the primary character of land e.g. land in a village centre is generally zoned Business, residential areas are zoned Residential, agricultural lands are zoned Rural, sensitive environmental lands are zoned Environmental (though some development may be allowed). There are also restrictions on development on Bush Fire Prone Land, though this is not covered by a Standard Instrument LEP. Development on Bush Fire Prone Land is regulated through separate legislation.
- environmental constraints and visual features identified through mapping e.g. steep slope, significant vegetation, watercourses and swamps, escarpment areas etc.
- recommendations arising from background studies undertaken to inform the development of the Draft LEP e.g. demographic and residential development studies, heritage studies, development of a subdivision strategy etc. These studies are also on public exhibition. You will find them on the Council's LEP website <http://bluemountainshaveyoursay.com.au/draftlep2013>. Look under 'Planning Proposal' in the 'Library'.

What is exempt and complying development?

The State government has determined what kinds of development can be undertaken without Council approval in certain conditions. These are either called 'exempt' development or 'complying' development and are generally developments that are deemed to be of minimal or low impact. An example of an exempt development is a garden shed. A house can be a complying development if it meets certain requirements and development standards. Exempt and complying developments cannot be carried out on environmentally sensitive areas as defined in legislation. You will also find this definition in Part 3.3 of the Draft Blue Mountains LEP 2013 written instrument.

How does the Draft Blue Mountains Local Environmental Plan 2013 differ from our current LEPs?

The DLEP 2013 has been prepared to fit a State government template (known as the Standard Instrument LEP Template). This is a 'one size fits all' approach to planning that prescribes the structure, terminology and much of the content of LEPs all over NSW, though there is scope for inclusion of local provisions. LEP 2005, on the other hand, is a 'place-based' planning instrument which was developed in response to the need to protect the Blue Mountains environment and the city's unique location within a World Heritage Area.

What a Standard Instrument LEP for the Blue Mountains means:

- The names of the zones in a Standard Instrument LEP are the same in all LEPs across the state. This means that the names of the zones in Blue Mountains LEPs 1991 and 2005 have been changed to the Standard Instrument zone names.
- There are mandatory clauses in the Standard Instrument LEP written instrument. These mandatory clauses are indicated in black text in the draft LEP. Council cannot remove these clauses (unless they don't apply) or change them.
- Zone objectives and 'permitted' and 'prohibited' development may have changed slightly in the transfer of current LEP 1991 and 2005 zones into Standard Instrument zones. Certain zone objectives and 'permitted' and 'prohibited' development (in black text) are mandatory. Council can add zone objectives and uses (red and green text – see next point).
- In addition to the mandatory clauses Councils can add their own clauses. These are either 'optional/settled' clauses (red text) that are already used in other Standard Instrument LEPs around the state, or local clauses (green text) that the Blue Mountains City Council has proposed. The clauses in Part 6 of the written instrument are mostly 'green' clauses that Council has inserted to ensure that the environmental protections in LEPs 1991 and 2005 are carried forward into the new LEP. These Part 6 clauses are the most at risk from intervention by the Minister for Planning and the Department of Planning and Infrastructure when the DLEP goes back to them for final approval. These clauses are crucial to the protection of the unique Blue Mountains environment and should be supported by all residents. See also next point.
- In drafting the Draft LEP 2013, Council had to convert the existing environmental protections in LEPs 1991 and 2005 into the Standard Instrument Template format. Sometimes these converted easily and other times there was no equivalent provision in the Standard Instrument Template format for the environmental protections we had in LEPs 1991 and 2005. For instance our current LEPs each contain a Schedule of Significant Vegetation which is not a feature of a Standard Instrument LEP. Council had to fight hard to have this Schedule included in the Draft LEP against the Department of Planning and Infrastructure's wishes. This Schedule may not be allowed in the version of the LEP which is finally gazetted (made law). This is why its inclusion needs strong support from Blue Mountains residents concerned to maintain our current levels of environmental protection. It is essential that this Schedule be in the new LEP because it gives legal protection to significant vegetation that has not yet been mapped on a site but may be identified in a site inspection as part of the development application assessment process.
- Although not strictly an environmental issue, one of the major sticking points between the Council and the Department of Planning and Infrastructure in making the draft LEP was what Standard Instrument zone to use for the current LEP 2005 'Living Conservation' zone. The LEP 2005 Living Conservation zone covers the large lot 'leafy street' residential areas of Blackheath, Katoomba, Leura, Wentworth Falls and Glenbrook villages. There is no equivalent Standard Instrument zone. Council fought hard to include its own proposed new zone, Residential R6 - Residential Character Conservation, in the DLEP. All other alternatives would allow inappropriate development (e.g. more intensive residential and other development, bigger homes taking up more space on the block) and loss of the garden character of these areas. It is critical that all residents, including environmentalists concerned with the potential impacts of over-development on the

Greater Blue Mountains World Heritage Area, support Council's new R6 Residential Character Conservation zone. This zone is at high risk of being disallowed by the Department and Minister.

What is the relationship between a Local Environmental Plan and a Development Control Plan?

A Development Control Plan (DCP) sits alongside an LEP. It is prepared and adopted by the Council. A DCP contains more detailed guidelines for development, though a DCP doesn't have the same legal standing as an LEP (i.e. DCP provisions can't be legally enforced whereas LEP provisions can). This is why it is essential for critical environmental protections, such as a Schedule of Significant Vegetation, to be included in the new LEP for the Blue Mountains rather than be relegated to the DCP (which is what the NSW Department of Planning and Infrastructure wanted). Some of the provisions contained in LEPs 1991 and 2005 that were not able to be transferred to the Standard Instrument format Draft LEP 2013 will be transferred to a new DCP.

The main current DCP in the Blue Mountains is the Better Living Development Control Plan (2005), which aligns with LEPs 1991 and 2005. This DCP will have to be revised to align with the Draft LEP 2013. Council anticipates that the revised DCP will go on public exhibition in 2014.

SO NOW YOU SHOULD BE READY TO PLUNGE INTO THE COUNCIL'S FACT SHEETS AND THE DRAFT BLUE MOUNTAINS LOCAL ENVIRONMENTAL PLAN 2013! Go to <http://bluemountainshaveyoursay.com.au/draftlep2013> or view a hardcopy at the Blaxland, Springwood and Katoomba libraries or at the Council's Springwood and Katoomba Administrative Offices during business hours. There is also a 'drop in' centre at Council's Katoomba office from 9 am to 2 pm, Monday to Friday, where you can speak to a Council planner.

FOR MORE INFORMATION AND RESOURCES (INCLUDING A SUBMISSION-WRITING GUIDE) GO TO THE BLUE MOUNTAINS CONSERVATION SOCIETY'S WEBSITE AND FACEBOOK PAGE at <http://www.bluemountains.org.au>.

More information sheets will be added as they become available.