

**Blue Mountains Conservation Society Inc.**

## **Planning and Development Resource Kit**



### **Information sheet: Development approval in the Blue Mountains**

See the **Development Control in the Blue Mountains** page for an overview of development control in the Blue Mountains and an explanation of terms.

In most cases, unless the proposed development does not require Council consent ('exempt' development), the consent authority for approval of development in the Blue Mountains is generally the Blue Mountains City Council. 'State significant' projects (e.g. mining) and major infrastructure projects are covered by separate State Environmental Planning Policies (SEPPs) and are determined by the Minister for Planning or their delegate.

In the case of 'complying' development, a Development Application to Council is not required but a Complying Development Certificate is issued instead by either a Council certifier or a private accredited certifier. A Certificate issued by a private accredited certifier has to be lodged with Council and the development listed in a register kept by Council. See the **How to Access a Development Application or Approval** page to find out how to access the register.

Even if a development does not require a Development Application, according to a SEPP or Local Environmental Plan (LEP), it may still need other forms of approval e.g. a construction certificate, an occupation certificate for a residence or an environmental assessment. If a house is a 'complying' development but is located in a bushfire prone area, it will need a Bushfire Risk Assessment Certificate before a Complying Development Certificate is issued.

#### ***What kinds of developments require Development Applications?***

Any development that is not 'exempt' or 'complying' requires a Development Application to be lodged with Council. Developments requiring a Development Application are classified as:

- **Designated developments.** These developments are unusual and will have significant environmental impacts e.g. agriculture, waste management and industrial activity.
- **Advertised developments.** Such developments include childcare centres, hospitals, churches, hotels and residential flats within certain zones in an LEP.
- **Other notifiable development** (or 'specified developments'). These developments represent the majority of Development Applications. They range from some internal renovations of buildings and demolition of structures to houses and multi-residential development, and subdivision into more than 5 additional lots.

### ***Notification and exhibition of Development Applications***

For 'designated' and 'advertised' developments, adjoining neighbours are notified of the Development Application through a letter and the public through a notice in the *Blue Mountains Gazette* and on the Council's website. See the **How to access a Development Application or Approval** page for information on how find a Development Application online. In the case of 'other notifiable developments' (or 'specified developments'), there are no statutory requirements to formally notify neighbours or the public, though Council may decide to do so under certain circumstances.

The [Blue Mountains Development Control Plan \(DCP\) 2015](#) Part H outlines the criteria and procedures used to inform the community of Development Applications. Note, however, that legislation will override these criteria and procedures if there is an inconsistency between them.

### ***What kinds of environmental studies and assessments are required for proposed developments?***

All Development Applications require a **Statement of Environmental Effects (SoEE)** and a **Site Analysis Plan**. In the case of dwelling houses and granny flats, a SoEE proforma is available from Council. A **Landscape Plan** is also usually required. Additionally, depending on the location and character of the proposed development, other assessments, reports, statements and management plans may be required and other government agencies may have to agree to or approve the development ('concurrence').

Additional assessments and plans may be required in the following circumstances:

- A **Flora and Fauna Assessment** is required if the development will require intact bushland to be removed or modified; if environmental protection zones or mapped protected areas (see Part 6 of LEP 2015) are likely to be impacted; if threatened species/ecological communities and their habitats, and significant vegetation, are likely to be impacted; if surface or groundwater changes may result; and if habitat features including watercourses and wetlands, fauna corridors, environmental protection zones or protected areas are likely to be impacted. The assessment must be done by persons with appropriate experience and qualifications in flora and fauna survey and assessment. Click [here](#) to see the Council's guidelines for a flora and fauna assessment. In some cases a **Vegetation Survey and Species Inventory** may be required instead.
- Where threatened species listed in the [Threatened Species Conservation Act](#) are likely to be or are present on the site, Section 5A of the [Environmental Planning and Assessment Act 1979](#) requires a '7-part test' to determine the presence of threatened species and whether a proposal would have a significant effect on those species. If there is a significant effect the applicant is required to complete a **Species Impact Statement** and may require approval from the Office of Environment and Heritage (OEH). Further information and threatened species assessment guidelines can be found on the OEH website: <http://www.environment.nsw.gov.au/threatenedspecies/>

- An **Erosion and Sediment Control Plan (ESCP)** is required where the area to be disturbed during construction is between 50 and 2,500m<sup>2</sup>.
- A **Soil and Water Management Plan** is required when the soil disturbance during construction is more than 2500m<sup>2</sup>.
- A **Vegetation Management Plan** is required when construction or future operation of the development will require removal or ongoing management of native vegetation and/or habitat (including removal for and maintenance of Asset Protection Zones), and for environmental protection works including conservation, regeneration, restoration, management and maintenance (including for fauna corridors). The Plan must be prepared by an appropriately qualified and experienced Environmental Consultant or Bush Regenerator. Click [here](#) to see the Council's guidelines for a vegetation management plan.
- A **Weed Management Strategy** is required where weeds are present onsite. These weeds include both Environmental Weeds and Noxious Weeds as listed in Part C of the [Blue Mountains Development Control Plan 2015](#).
- For developments **on bushfire prone lands** identified on the Council's maps, the Development Application must be accompanied by a **bushfire threat assessment** and a **statement on asset protection zones**. A detailed environmental assessment is required if the development and/or asset protection zones are located within any protected or environmentally sensitive area. In some developments in bushfire prone areas (e.g. subdivisions and developments such as schools, hospitals, tourist accommodation, retirement village), a **Bush Fire Safety Authority** from the NSW Rural Fire Service is also required. See <http://www.rfs.nsw.gov.au/plan-and-prepare/building-in-a-bush-fire-area/legal-obligations/legislative-requirements>
- If the proposed development is within the Sydney water catchment, it may require additional assessments and concurrence (agreement or approval) of WaterNSW.

For a summary of submission requirements, see Part I of the [Blue Mountains Development Control Plan 2015](#).

For a guide to the development standards, documentation and assessments required for Development Applications involving housing, tourist accommodation, subdivisions and other forms of development in areas covered by LEP 2015, refer to the [Blue Mountains Development Control Plan 2015](#).

### ***How are Development Applications approved?***

Development Applications are assessed and approved by a 'consent authority' which in most cases is the local Council or, in certain cases or where required by legislation, another body such as a Joint Regional Planning Panel or the Planning Assessment Commission. These bodies have the authority to approve or refuse developments and impose conditions of consent.

When Council is the consent authority, approval (or refusal) of Development Applications may be by delegated authority (i.e. a Council officer) or, if a significant development, by a meeting of Council. Blue Mountains City Council has a policy on what kind of Development Applications are to come to a Council meeting for determination. A Councillor can also request that a Development Application is

brought to a Council meeting for determination. You can approach a Councillor to request the application be brought to a Council meeting. When a development comes to a Council meeting for determination, people who lodged a submission will be advised by letter and will have the opportunity to address the meeting. If you have asked a Councillor to bring the development to a Council meeting for determination you should be prepared to lobby the other Councillors prior to the meeting and convince them of your arguments. Because of the legal ramifications, Councillors are often not prepared to vote against a development if Council planning staff have recommended it be approved, but additional conditions may be able to be applied to the development consent.

Approvals or refusals of Development Applications or modified Development Applications are listed in the register kept by Council. See the **How to Access a Development Application or Approval** page to find out how to access the register. Some approvals or refusals are advertised in the Council notices in the *Blue Mountains Gazette*. Once a Development Application has been determined, you can find the full documentation in the Council's register, along with the determination itself (including conditions of consent, if approved).

Amendments to an approved development can be made on application to Council by the landowner. If the requested modifications are substantial or are likely to have a significant impact, the applicant has to submit a new Development Application and the approval process will be followed with some modifications depending on the circumstances. Members of the public who made submissions to the initial Development Application may also be advised of the new application.

In certain circumstances, development consent can be revoked or modified by the NSW Director General of Planning.

Once a Development Application has been approved or a Complying Development Certificate has been issued, a certifier (Council or private) is responsible for ensuring that the development is carried out in accordance with the approved plans, specifications and conditions of consent, and for issuing the relevant certification.

### ***Public participation in development approval***

The Blue Mountains City Council's [Blue Mountains Development Control Plan 2015](#) Part H outlines the criteria and procedures used to inform the community of Development Applications. It covers public consultation and notification mandated in the *Environmental Planning and Assessment Act* (EP&A Act) and related instruments. The Blue Mountains City Council also has a policy on community consultation and participation in Council's planning and decision-making. Accompanying the policy is a *Community Consultation Matrix* which sets out the types of community consultation and participation that may be appropriate, depending on the level of impact and public interest. The kinds of Council activities and planning on which community consultation is sought and which are covered in the Matrix include Local Environmental Plans; various Council management plans, policies and studies; development issues and Development Applications. Click [here](#) to see the Council's *Community Consultation Policy* and *Community Consultation Matrix*.

## **Exhibition of the Development Application**

In the case of Development Applications requiring a period of public exhibition of the development proposal and associated documents, the exhibition period will be set out in the letter you received from Council (if you are a neighbour) or in the Council notices in the *Blue Mountains Gazette* (if it is a significant development). Alternatively, see the **How to Access a Development Application or Approval** page to find out how to view the Development Application online during the exhibition period. The length of the exhibition period varies according to whether the Council's assessing officer believes that the proposed development will affect only neighbours (14 days) or if it is more significant (30 days).

## **Other forms of public consultation on a Development Application**

A **public meeting** on a development proposal of high public interest or impact may be called by Council as part of the assessment consultation process. To be considered as part of the formal process of assessment, the meeting must be initiated by Council staff or a Councillor. People who made a submission to the Development Application will be invited by letter to attend the public meeting and, where there is a wider community interest in the proposal, the meeting will be publicly advertised. One recent example of this was the Council-sponsored public meeting held about the Hat Hill Rd residential subdivision in Blackheath.

## **Who can make a submission to a Development Application?**

You do not need to be a neighbour of a proposed development to lodge a submission on a Development Application – any member of the public can make a submission.

See the **How to Make a Submission to a Development Application** page for information about how to make a submission on an exhibited Development Application.

## ***How are Development Applications assessed?***

Council must consider certain matters when determining a Development Application. Section 79C of the *Environmental Planning and Assessment Act* (EP&A Act) lists the matters a consent authority must consider when determining a Development Application. Council will also consider threatened species protection requirements which are covered by section 5A of the EP&A Act (see under *What kinds of environmental studies and assessments are required for proposed developments?* above).

Commonwealth assessment under the *Environmental Protection and Biodiversity Act 1999* (EPBC Act) is also not part of the Council approval process but is the responsibility of the applicant to refer to the relevant Commonwealth Department for a separate assessment under certain circumstances. This is something to be aware of when looking at a Development Application, where appropriate (see **How to Make a Submission to a Development Application** page).

Development Applications must be assessed against:

- The provisions of the relevant LEP, its principles and objectives, and the objectives, permissible uses and development standards (access, design and character, building height, site coverage, bushfire protection etc) of the zone that the proposed development is located in.
- The provisions of relevant SEPPs and other instruments, including draft LEPs.
- The provisions of a Development Control Plan (in the Blue Mountains DCP: biodiversity, stormwater management, setbacks, screening from adjoining properties, amenity, accessibility etc).
- Impacts on the natural and built environment (e.g. vegetation removal, heritage impacts, character and amenity, stormwater, traffic).
- Social and economic impacts in the locality.
- Suitability of the site for the development.
- Submissions by the public.
- The public interest.
- Other criteria specified in the *Environmental Planning and Assessment Act*.

Note that where the proposed development does not comply with zone standards, the applicant may apply to vary the standard through a [State Environmental Planning Policy No. 1](#) objection. This 'SEPP 1 objection' will be included in the documentation submitted with the Development Application. Currently, all such applications for variations of standards come to Council meetings.

Where a Development Application comes to a Council meeting for determination, Council staff prepare a report for the meeting which addresses the assessment criteria above and, based on this, recommends approval or refusal, or consent with conditions. This report will be in the business papers and minutes of the meeting which you can find on the Council's website by clicking [here](#).

### ***Regionally significant developments***

Although the consent authority for approval of development in the Blue Mountains is generally the Blue Mountains City Council, there are a small number of projects whose scale, significance or potential impacts are such that they are of regional or state significance.

Regionally significant Development Applications are determined by a **Joint Regional Planning Panel** (Regional Panel). In the case of the Blue Mountains, such developments are determined by the Sydney West Regional Panel. Developments that are in this category include those of a certain capital investment value and eco-tourist facilities with a capital investment value of over \$5 million.

The Development Application is lodged with Council who calls for public submissions and assesses the application. The Development Application is then referred to the Regional Panel for determination. Proponents of the development and people who made a submission to the Development Application can address the meeting of the Regional Panel where the Development Application is to be determined. A recent example of a development determined by the JRPP is the reconstruction of the Springwood Civic Centre.

Fact sheets about the process of determination of DAs by Joint Regional Planning Panels can be found by clicking [here](#).

### ***'State significant' and major infrastructure projects***

'State significant' projects come under [State Environmental Planning Policy \(State and Regional Development\) 2011](#) and are determined by the Minister for Planning. The Minister can delegate his or her approval functions to the Department of Planning and Infrastructure or the **Planning Assessment Commission (PAC)**. The Minister also has the authority to 'call in' a development proposal for assessment if the Planning Assessment Commission recommends this.

'State significant' projects include mining, gas and oil industries. A recent example of a 'State significant' project reviewed by the PAC was Coalpac's proposal for the expansion of its open-cut coal operations at Cullen Bullen in the Lithgow area.

In the Blue Mountains, a 'State significant development' is most likely to be a tourist development of a certain capital value. Coal seam gas projects would also be a 'State significant' development.

There are a series of fact sheets on State significant developments and the process of determination produced by the Department of Planning and Infrastructure which you can find by clicking [here](#). You can also find out more about this from the Environmental Defender's Office's Fact Sheet on [State Significant Development and State Significant Infrastructure](#). Click [here](#) to go to the Planning Assessment Commission's website.

You can find current or past Development Applications and determinations for State significant projects by clicking [here](#). Members of the public can make submissions to exhibited Development Applications.

**Sources of information for this page:** Blue Mountains City Council, NSW Environmental Defender's Office, NSW Department of Planning and Infrastructure, NSW Rural Fire Service.

NSW Rural Fire Service (2012) BAL Risk Assessment Application Kit:

[http://www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0020/4349/BAL-Risk-Assessment-Application-Kit.pdf](http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0020/4349/BAL-Risk-Assessment-Application-Kit.pdf)

NSW Rural Fire Service (2006) Guidelines for Single Dwelling Development Applications:

[http://www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0017/4355/Guidelines-for-Single-Dwelling-Development-Applications.pdf](http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0017/4355/Guidelines-for-Single-Dwelling-Development-Applications.pdf)