

Blue Mountains Conservation Society Inc.

Planning and Development Resource Kit



Information sheet: Development control in the Blue Mountains

The Blue Mountains Local Government Area (LGA) is uniquely situated in a National Park and World Heritage Area. To protect our natural environment, and the economic and other benefits it provides, controls on development are stringent—on paper at least.

The overarching legal framework regulating land use and development in NSW is the [Environmental Planning and Assessment Act 1979](#) (EP&A Act).

The EP&A Act allows for two types of Environmental Planning Instruments (EPIs):

- Local Environmental Plans (LEPs)
- State Environmental Planning Policies (SEPPs)

Both types of EPIs provide for what kind of development is prohibited or can be carried out with or without consent, and for ‘exempt’ and ‘complying’ development.

Local Environmental Plans (LEPs)

Development on all land (public, private, leased) in LGAs like the Blue Mountains is controlled by a legally enforceable instrument, a Local Environmental Plan (LEP). The *Blue Mountains LEP 2015* covers the Blue Mountains Local Government Area. For further information and to access LEP 2015 click [here](#).

LEPs prescribe permissible land uses through applying zones to different blocks of land. Zones contain objectives which indicate the principal purpose of the land e.g. residential, commercial, industrial, environmental etc. Each zone also specifies what kinds of developments are permitted with consent, permitted without consent or prohibited altogether. A list of these may be found in the Land Use Tables in LEPs. The appropriate zones and provisions are determined through studies undertaken as part of the process of developing LEPs e.g. environmental studies, residential character studies. LEPs also specify standards which regulate the extent of development within the zones e.g. minimum lot sizes. There are also additional development constraints applying to particular areas and blocks, for instance the presence of environmental features like steep slope, watercourses, swamps, significant vegetation communities and threatened species, and where the block is designated ‘bushfire prone land’. To view the zones and other constraints that apply to a specific block of land, go to the Blue Mountains City Council’s interactive maps. See the **How to View BMCC Interactive Maps** page to find out how to use the maps.

However, under [State Environmental Planning Policy No. 1](#), developers are also able to apply for an exemption from or a variation to the development standards in LEPs if their proposal meets the objectives of the LEP, though some clauses of LEPs may be exempt from SEPP 1. These standards include floor space ratios, height restrictions and density, for example.

Development Control Plans (DCPs)

In addition to LEPs, Development Control Plans (DCPs) set out further development controls and standards that apply to development proposals in local government areas. DCPs are not legally enforceable but provide specific, comprehensive guidelines for certain types of development, or area- and site- specific requirements. The Blue Mountains LGA is covered by the [Blue Mountains Development Control Plan 2015](#).

The *Blue Mountains DCP* is a useful resource, providing a summary of development constraints, controls and standards in LEP 2015 as these apply to specific types of developments e.g. dwelling houses, granny flats, subdivisions, Bed and Breakfast establishments. The DCP also summarises the documentation required for Development Applications for these types of developments, including the situations in which flora and fauna assessments, bushfire threat assessments and detailed environmental assessments, amongst others, are required.

State Environmental Planning Policies (SEPPs)

The NSW government also creates its own State-wide legally enforceable planning policies on matters of State significance which impact on development control in local government areas. SEPPs override all other planning instruments and policies, including local LEPs. For example, a LEP might prohibit residential development in a particular zone but a SEPP might allow it if it achieves one of the SEPP's aims. SEPPs may be in direct conflict with or have more relaxed controls than the Blue Mountains LEP and DCPs but the SEPP always overrides the LEP and DCPs. Click [here](#) for a full listing of SEPPs (see under EPIs). An outline of the SEPPs that have most significance for development in the Blue Mountains follows.

SEPP (Exempt and Complying Development Codes) 2008

The SEPP that is most relevant to residential development is the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) (the Codes SEPP). This SEPP allows development of minimal environmental impact to be carried out without Council consent ('exempt' development) or without the need for a Development Application ('complying' development).

- **Exempt** development includes things like garden sheds, gazebos, pergolas and water tanks if they comply with certain standards in the SEPP. Exempt developments are not subject to environmental assessment and approval processes.

- **Complying** development includes houses that are built to the standards of the General Housing Code in the SEPP. Complying developments don't need to go through a Development Application process but are instead approved through a Complying Development Certificate issued by the Council or by a private accredited certifier. This means that new detached single and two-story houses and home alterations and additions which comply with specified standards (site requirements, building heights and setbacks etc) in certain zones can be approved very quickly, within 10 days. There is no requirement to notify neighbours or the public prior to a determination being made (approval or refusal), and there is no opportunity for the public to make submissions on the proposal. Neighbours will not know about the development until works begin.

Restrictions on 'exempt' and 'complying' development

Developments cannot be deemed 'exempt' and 'complying' in certain circumstances e.g. where the proposed development is in an environmentally sensitive area, on high risk bushfire land or requires concurrence (agreement or approval) of another authority such as the Office of Environment and Heritage, Roads and Maritime Service etc. For further information on restrictions see [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

'Exempt' and 'complying' developments under the Codes SEPP are a concern because neighbours are not consulted and no environmental assessment is required. This means there are no controls on environmental impacts.

SEPP (Sydney Drinking Water Catchment)

Another SEPP relevant to the Blue Mountains is the [State Environmental Planning Policy \(Sydney Drinking Water Catchment\) 2011](#). This SEPP only applies to development in the Sydney Drinking Water Catchment which is largely south of the Great Western Highway from Wentworth Falls to Mount Victoria and out to Bell. Development in the catchment is required to have a "neutral or beneficial effect" on water quality. Further information on this is available on the WaterNSW website (<http://www.watarnsw.com.au/water-quality/catchment/development>).

The location of the water catchment areas can be found in the Council's interactive maps by going to the Protected Areas 'Water Supply Catchment' map view. See the **How to view BMCC Interactive Maps** page for directions on how to use the Council's interactive maps.

Other development controls

NSW State government

Threatened species

The EP&A Act provides for consideration of threatened species listed under the [Threatened Species Conservation Act](#). The Act lists threatened species, populations, ecological communities and their habitat, and declares critical habitat. Requirements concerning the protection of listed threatened

species during the development assessment and approval process are contained under section 5A of the EP&A Act. A '7-part test' is required to determine the presence of threatened species if a proposed development has or is likely to have threatened species on-site or nearby, and whether a proposal would have a significant effect on those species. If there is a significant effect a proponent is required to complete a Species Impact Statement and may require an 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/>

Development near waterways

Section 91 of the [Water Management Act](#) requires that, if a development or works are proposed on land within 40 metres of the bed on either side of a waterway (permanent and intermittent) or lake, a 'controlled activity' approval may be required from the NSW Office of Water. Exemptions to requiring such an approval are listed under Schedule 5 of the [Water Management \(General\) Regulation](#). Exemptions include development carried out in connection with a dwelling house or dual occupancy that is 'exempt' or 'complying' development, or a development which has a development consent and is not on or in the bed or bank, or bed or shore, of any river or lake. Under the *Water Management Act* the term river applies to any permanent or intermittent waterway.

Development adjacent to National Parks

There are guidelines for development adjacent to National Parks which you can access by clicking [here](#).

Vegetation clearing

The NSW [Native Vegetation Act](#) mainly concerns land clearing in rural areas. In the Blue Mountains the *Native Vegetation Act* applies in the Megalong Valley, Sun Valley, Mt Irvine, Mt Wilson and Mt Tomah.

Since August 1, 2014, the 10/50 bushfire vegetation clearing law and Code allows landholders in NSW to clear trees on their property within 10m of a home and clear underlying vegetation such as shrubs (but not trees) within 50m of a home without formal approval. However, there are some conditions e.g. the land must be in a Vegetation Clearing Entitlement Area (which includes most of the Blue Mountains). For further information go to the NSW Rural Fire Service's [10/50 vegetation clearing](#) website and the Blue Mountains City Council's [10/50 vegetation clearing law](#) website.

Integrated Development

Section 91 of the [Environmental Planning and Assessment Act 1979](#) lists the approvals required from State Authorities under other Acts during the development assessment process (including some of

those listed above). Development requiring an approval under any Act listed in Section 91 is categorised as 'integrated development'. Such approvals are required before development consent can be granted.

Subcatchments

[*Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River \(SREP 20\)*](#) identifies conservation subcatchments that are to be protected. In the Blue Mountains, these are the Grose River, Glenbrook and Erskine Creek sub-catchments. Development controls and matters for consideration by the consent authority apply when subdivisions or new zoning is being considered. Clauses 5 & 6 apply to the Grose River subcatchment. Clause 11 applies to Erskine Creek sub-catchments.

Commonwealth government

The Commonwealth [*Environmental Protection and Biodiversity Conservation Act 1999*](#) (EPBC Act) applies in very specific situations e.g. where the development will have, or is likely to have, a significant impact on nationally listed threatened or migratory species, ecological communities and World Heritage areas. It is the developer's responsibility (whether a private developer or government body such as the Council) to refer such matters to the relevant Commonwealth department for a separate assessment and approval. If a proposed development is referred to the Commonwealth for determination on whether it is a 'controlled action' under the EPBC Act, public comment is invited.

For detailed information on these legal frameworks, consult the NSW Environmental Defender's Office 'Fact Sheets' by clicking [here](#).

Sources of information for this page: Blue Mountains City Council, Commonwealth Department of Environment, NSW Environmental Defender's Office, NSW Department of Planning and Infrastructure and Office of Environment and Heritage.