

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 (e.g. 'exempt' and 'complying' development), the consent authority for approval of development in the Blue Mountains is generally the Blue Mountains City Council or a Local Planning Panel. Proposals for regionally significant developments worth over \$30 million in capital investment value are determined by the Western City District Planning Panel. '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. It may also require a permit from Council if clearing of native vegetation is involved. 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 a 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:

- An **Ecological (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.

In the case of developments which do not trigger the NSW Biodiversity Offsets Scheme (see below), the Ecological Assessment Report must provide evidence of this and a 'test of significance' of biodiversity impact.

- A **Biodiversity Development Assessment Report (BDAR)** may be required to be submitted with a Development Application under the provisions of the NSW [Biodiversity Conservation Act 2016](#) (BC Act) if the development is likely to significantly affect threatened species<sup>1</sup>. Schedules 1 and 2 of the *BC Act* list threatened species and threatened ecological communities. Offsetting will be required and set out in the BDAR. Further information can be found on the Office of Environment and Heritage 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](#).
- A **Landscape Plan** is required for almost all development proposals. This plan includes the approaches that will be used to retain and manage existing native vegetation through to the creation of a formal European style garden.
- 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.
- If the proposed development is within the Sydney drinking water catchment, it may require additional assessments and concurrence (agreement or approval) of WaterNSW.
- If the proposed development is a 'designated' development, an Environmental Impact Statement (EIS) is required to be lodged with the Development Application.

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<sup>1</sup> This is determined with reference to the '5-part test' (or 'test of significance') in the *BC Act 2016* (Section 7.3), or applies where the proposed development exceeds the Biodiversity Offsets Scheme (BOS) threshold or is to be carried out on an Area of Outstanding Biodiversity Value. The Biodiversity Offsets Scheme will be triggered in these circumstances.

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/Local Planning Panel or, in certain cases or where required by legislation, approval is delegated to another body such as the Planning Assessment Commission, a Regional Planning Panel (which in the case of the Greater Sydney area is called a District Planning Panel) or a Local Planning Panel. These bodies have the authority to approve or refuse developments and impose conditions of consent.

Changes to NSW legislation in August 2017 saw Councils stripped of their approval powers for certain large or contentious Development Applications (DAs). Now, certain stipulated DAs go to a Local Planning Panel (LPP) for approval.

#### **Local Planning Panel (LPP)**

The Local Planning Panel (LPP) is the consent authority if the proposed development is a development proposal from the Council or other government agencies. Other Development Applications which go to a LPP for determination include those with more than 10 objections from different households, DAs departing by more than 10% from a development standard, DAs involving the demolition of a heritage item and DAs associated with a higher risk of corruption. A panel of 4 experts determine these DAs. Councillors, property developers and real estate agents cannot be members of a Local Planning Panel.

See the Blue Mountains City Council's [Local Planning Panels](#) page.

The impact of these changes is enormous. Large or contentious developments will no longer come to Council meetings for determination so the community won't be able to lobby Councillors and won't be able to lobby Panel members – they are prohibited from discussing the DA with members of the public. However, proponents of the development and people who made a submission to the Development Application can address the meeting of the relevant Planning Panel where the Development Application is to be determined.

The elected Councillors will now be confined to matters of community services, strategic plans and development controls – they will have no control over individual developments unless a rezoning is required. See the **How to Make a Submission on a DA** page for discussion on how the community may now engage with the approval process on large and contentious DAs post-submission.

For all other DAs not stipulated in the legislation the Council is still the consent authority. Approvals or refusals for these DAs will be mostly dealt with by delegated authority (i.e. a Council officer).

Approvals or refusals of Development Applications or modified Development Applications (including those processed by the Local Planning Panel) 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 by the landowner to the consent authority (Council or other body). 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 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 receive 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 of broader significance (30 days).

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

When a stipulated DA is being determined by a Local Planning Panel or a District Planning Panel, there will be a public hearing following the exhibition period. If you made a submission on the DA you will be notified and advised to register if you wish to address the public hearing. Members of the public who did not lodge a submission may be able to address the hearing at the Panel Chair's discretion.

### **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?***

Consent authorities 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 under the [Biodiversity Conservation Act 2016](#).

Commonwealth assessment under the Commonwealth [Environmental Protection and Biodiversity Conservation Act 1999](#) (EPBC Act) is not part of the Council approval process but it is the responsibility of the applicant to refer the proposal 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 in which the proposed development is located.
- The provisions of relevant SEPPs, Acts 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 (e.g. height of a building) under the provisions of Part 4.6 of *Blue Mountains LEP 2015*. If the variation is over 10% of the development standard it will be referred to a Local Planning Panel for determination.

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](#).

Note that stipulated DAs which go to a Local Planning Panel (LPP) for determination are still subject to this process of assessment and recommendation by Council staff. But their report goes to the LPP rather than a Council meeting.

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

Although the consent authority for approval of development in the Blue Mountains is generally the Blue Mountains City Council or Local Planning Panel, 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 **Regional Planning Panel**, which is called a **District Planning Panel** in the Greater Sydney area including the Blue Mountains. The Blue Mountains is covered by the Western City District Planning Panel and is headed by the Western City District Commissioner of the Greater Sydney Commission. Developments that are in this category include those with a capital investment value over \$30 million, eco-tourist facilities with a capital investment value of over \$5 million and DAs from Councils with a capital investment value 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/District Panel for determination. Proponents of the development and people who made a submission to the Development Application can address the meeting of the Regional/District Panel where the Development Application is to be determined.

Fact sheets about the process of determination of DAs by Regional Planning Panels/District 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. 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 Defenders 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 Defenders Office, NSW Department of Planning and Infrastructure, NSW Rural Fire Service.

NSW Rural Fire Service:

<https://www.rfs.nsw.gov.au/plan-and-prepare/building-in-a-bush-fire-area/planning-for-bush-fire-protection/bush-fire-prone-land/check-bfpl>

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)