

Blue Mountains Conservation Society Inc.

## Planning and Development Resource Kit



### Information sheet: How to make a submission to a Development Application (DA)

**Note:** This information sheet does not cover 'exempt' or 'complying' development. To find out if the development you are interested in may be 'exempt' or 'complying' you should read the **Development Control in the Blue Mountains** page.

#### *Who can make a submission?*

Anyone can make a submission on a Development Application (DA). You don't have to be a neighbour, an expert or prove you have a legitimate interest in the proposed development. A full explanation of the process of public participation in Development Applications can be found in **Part H** of the [Blue Mountains Development Control Plan 2015](#).

#### *Some general points and suggestions*

- Make sure you lodge your submission to Council by the means identified (mail, email, online) and by the nominated date. For legal reasons, your submission will not be accepted after that date unless you have received formal approval for an extension of time.
- If you cannot lodge a submission on time, you should contact the development assessment officer (whose name can be found in the documentation) and ask for an extension. It is best to have an approval for an extension of time in writing or in an email. It is then safer to put in a written submission saying you wish to object and that further detail is coming.
- Be aware that your submission is not confidential and will be available to the public.
- We strongly advise that you read the **Development Control in the Blue Mountains** and **Development Approval in the Blue Mountains** pages in order to gain an understanding of the legal framework and the development assessment and approval process.

#### *How to use this guide*

We are aware that people will approach making a submission to a Development Application with varying levels of engagement with the detail. Some people may just want to make an objection to the proposed development or object to one or two aspects of it in their own words. Others will want to ensure that their concerns fit the assessment criteria and will want to thoroughly examine the Development Application and lodge a detailed submission. You may be somewhere in between. Our suggestions for how these different people may use the guide are as follows:

- **Level 1 engagement: for those who don't wish to do a lot of homework.** If you just wish to state your objection in your own words without doing lots of background work on the DA or the assessment criteria, you can go straight to **STEP 5: Writing a submission on a Development Application**. However, you still need to clearly set out the reasons for your objection. Your submission will be stronger if you can address one or more of the assessment criteria. If you wish to do this briefly, we suggest you follow the guidance for Level 2 engagement.
- **Level 2 engagement. If you have one or two specific concerns** about the proposed development, and wish to find something to support your case quickly then go to **STEP 2**. Go straight to the list of 19 topics in the checklist. Does your issue fit into one of these? You could just use these headings and this general information in your submission. If you wish to link your objection to a development standard or requirement in the Local Environmental Plan (LEP) and Development Control Plan (DCP), go to **STEP 3** to find something to support your case. If you can read all Step 3 that is best. However, you can also just skim through to the table of issues in Step 3 and find the relevant clause(s) that you can refer to in your submission. Then go to **STEP 5: Writing a submission on a Development Application**.
- **Level 3 engagement. If you want to put up the strongest case possible** to object to the Development Application, we suggest you follow *all* the steps below.

If you feel overwhelmed or 'out of your depth' at any stage but believe that the proposed development is likely to have a significant unacceptable environmental impact, you can always ask a more knowledgeable person to look at the Development Application with you. Or you can contact the **Blue Mountains Conservation Society** for further advice and support.

## **STEP-BY-STEP GUIDE TO MAKING A SUBMISSION TO A DEVELOPMENT APPLICATION**

The following step-by-step guide is an attempt to assist people with little or no knowledge of planning laws to analyse a development proposal and write a letter of objection (a submission). We have identified some of the key environmental issues; however it is only a summary.

### **STEP 1: Preliminary site inspection**

It is a good idea to look at the site before *and also after* you have inspected the Development Application documents. This preliminary site inspection will help you make sense of the DA documents. However, **be aware that it is illegal to go on to private land without the owner's permission.**

Depending on the size of the site, take a compass, topographic map, measuring tape, notebook and camera. Make a sketch map of the site, noting (and photographing) significant features such as boundaries, fences, tracks as well as the environmental features listed below.

#### **What environmental features should you look for?**

Don't worry if you don't know what these features are at this stage, you'll get more clues from Step 2.

- Does the site have steep slopes? (Does it appear to be more than 1 in 5?)
- Is there uncleared bushland on the site? What areas have been cleared? (Is the clearing recent? It could be illegal). Is there bushland within 100m of the site?
- Is there a creek line either on or within 100m of the site?
- Does the site contain environmentally sensitive vegetation, or is it within 60m of it (e.g. swamps, heath, rainforest, alluvial forests, Blue Gum forest)?
- Are there threatened species of plants or animals, either potentially or known? Is the site within 20m of such species?
- Are there weeds on the site?
- Are there rocky outcrops and/or escarpment on the site?
- Is the site adjacent to a National Park?
- Will the development significantly increase the density of the locality and therefore increase other environmental impacts (e.g. on the stormwater system etc)?
- Are there any other issues you can see?

The reason for looking at creeks and bushland that may be 100m or 60m away is that the land may be part of a 'buffer area'.

If you are concerned about any of these issues you need more details as to what is planned, so go to Step 2. The DA will provide these details.

## **STEP 2: Inspecting a Development Application (the plans)**

You can only access and inspect a Development Application online. If you don't have a home computer or have low download limits, you can view Development Applications on the public access computers at the Council's Springwood and Katoomba offices during office hours. Staff at the offices can assist you navigate to the relevant plans and documents if needed. Or take a more 'computer-literate' friend with you to the office.

For instructions on how to access a Development Application online, see the **How to Access a Development Application or Approval** page.

Once you have accessed the DA, we suggest you follow the process below:

### **Obtain the Development Application key information**

No matter how simple a submission you want to make, you will need to know:

- The DA number (reference number looks something like X/8/2013).
- Date when submissions close.

This information can be found:

- On the online Register of Development Applications. See the **How to Access a Development Application or Approval** page to find out how to access the Register.
- In the notice in the *Blue Mountains Gazette*, if the DA has been advertised.
- In the letter from Council, if you have been notified as a neighbour.
- By ringing Council on 4723 5000 (from lower mountains) or 4780 5000 (from upper mountains).

### **What to look for in the Development Application documents**

If you are only interested in one or two aspects of the proposed development, go straight to the 19 topics in the checklist below (in this current step, Step 2). Otherwise, continue reading.

As you are working through the DA, make notes on the concerns you have so that you can go back to the site to check and also include them in your submission.

When looking at the DA, you are looking for 2 types of information:

- The details of what is to be constructed (and therefore what impacts it may have on the environment e.g. creek, swamp, habitat etc).
- Whether anything proposed is contrary to any of the planning laws and regulations.

As Council will assess the development proposal in relation to the relevant planning instruments, it is important to look for how your concerns might align with planning laws and regulations. The site inspection checklist (in Step 1) identifies the major environmental issues where regulations apply. These are covered fully in this step, Step 2.

## Documents to look at in the Development Application

Look for these plans or reports amongst the DA documents:

- Site Analysis Plan.
- Statement of Environmental Effects (but don't assume that this is correct).
- Environmental Impact Statement (if it is a 'Designated Development').
- A Biodiversity Development Assessment Report (BDAR) if the proposed development triggers the Biodiversity Offset Scheme through the 'test of significance' in Part 7 (7.3) of the [Biodiversity Conservation Act 2016](#) or through exceeding the Biodiversity Offsets Scheme threshold (see **Scenario 1: Land Clearing and Development Approval in the Blue Mountains** pages for explanation).
- Landscape Plan.
- Bushfire threat assessment and statement on Asset Protection Zones (APZ).
- Any other environmental studies/plans supplied e.g.:
  - Erosion and Sediment Control Plan
  - Ecological (Flora and Fauna) Assessment
  - Vegetation Management Plan
  - Weed Management Strategy
- SEPP 1 Objection (if there is one).
- Other maps and/or reports.

## Other useful information

You can also get important information about the site by looking up Council's interactive maps. See the **How to View BMCC Interactive Maps** page for information on how to access and use these maps. You can view maps showing topography, public land, bushfire prone land, slope, vegetation community, LEP zoning, Environment (Biodiversity, Riparian Water, Scenic Values), Heritage etc.

If there are any discrepancies between these maps (or other reputable sources of information) and the Development Application (which is prepared by the applicant), you can draw Council's attention to it in your submission.

## Is the documentation complete?

All DAs must include a Site Analysis Plan, a floor plan, section plan, elevation plan, a Statement of Environmental Effects and usually a Landscape Plan, but are other relevant plans, studies, assessment and reports included in the exhibited DA e.g. a BDAR (above)? Go to the **Development Approval in the Blue Mountains** page for a list of other studies and plans that may be required. You can check with a Council officer about what documents and referrals (e.g. to other government agencies) are required for this Development Application. If relevant documents are not exhibited, you can request that they are made available before the end of the exhibition period so that you can include comment on them in your submission. Note any irregularities in documentation in your submission.

## Checklist of information supplied by applicant to look for in the Development Application

You can approach your inspection of the DA by considering the information supplied by the applicant with reference to some or all of the topics below. You can address these topics in your submission.

1. **Location and size of Construction.** Look at the Site Analysis Plan which locates the building on the site. Note the distances from boundaries and any other feature you have noticed (e.g. creeks, escarpments) and also the size of the development. Could the development exceed the limits for site cover (all impervious surfaces, not just buildings included)? See LEP and DCP clauses later.
2. **Area to be cleared of native bushland.** The area to be cleared or disturbed can be found in one or more of these documents:
  - The Site Analysis Plan.
  - The bushfire threat assessment report and statement on Asset Protection Zones. Identify the Asset Protection Zone (APZ). Does the proposed APZ encroach into an Environmental Protection zone, a Protected Area, or a bushland area? Is all of the APZ contained within the boundary of the lot?
  - The Landscape Plan. Check this carefully for vegetation clearing.

There are restrictions on vegetation clearing which vary with location, zone, site, Protected Area, or buffer to Protected Area (even if the Protected Area is located on an adjacent property). See more information in Step 3.

Take into account future '10/50' clearing entitlement areas: trees will be able to be cleared within 10m of the outside wall of the house/building and vegetation within 50m of the house/building once they are built (see **Development Control in the Blue Mountains** page).

There are restrictions about clearing near creek lines or other watercourses. These should be covered by the Protected Area provisions (see points 3 & 5 below).

3. **Type of development permitted.** What **zones and Protected Areas** cover the land? The DA should identify what zone/s cover the property and if there are any Protected Areas on the site. See LEP 2015 Part 6 for a list of Protected Areas. You can also go to the LEP maps which show where the zones and Protected Areas are on the property. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps.

Note any Environmental Protection (E2), Recreation (RE1, RE2), Environmental Conservation (E3) or Environmental Management (E4) zones as these have extra protections.

Are there any Protected Areas? If so, which ones? Does the Site Analysis Plan show how they are going to be protected? Are there currently native vegetation buffers around these, and proposals for their retention? More details on protected areas are below.

Think about what practical means would protect these areas that you could suggest be included in the Development Consent conditions, e.g. a fence or a mowing barrier. Even if it is drawn on the site plan, clear wording in the Consent Conditions is necessary for the detail to be enforced.

4. **Steep Slope.** Does the Site Analysis Plan or Landscape Plan have contour lines to indicate a steep slope? The cross sections and elevations will also give this information for the building

envelope. If the slope is steeper than 1 in 5 there are additional constraints to development (refer to Step 3).

The elevations will also give information on the extent of excavation planned – there are restrictions on this. The LEP slope maps will provide more information. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps.

5. **Creeklines/watercourses.** Did you notice any permanent or ephemeral watercourses on the land? If these have not been mapped, notify Council in your submission.  
Are there any creeklines and riparian zones identified in the DA documents (e.g. on the Site Analysis Plan). Check the Council's interactive maps to see if there is a watercourse and riparian land on the site. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps. A riparian zone of 10-60m applies to each side of a watercourse as measured from the top of the bank. If there is a watercourse and riparian land, what is proposed to protect these? Is any disturbance going to happen in an area nearby that might impact on the riparian zone e.g. clearing for an Asset Protection Zone?

If any works are proposed on land within 40m of the top of the bank of a watercourse (permanent and intermittent) approval may be required under Section 91 of the [Water Management Act](#). This 'controlled activity' approval is dealt with by 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 development consent and is not on or in the bed or bank, or bed or shore, of any river or lake.

6. **Vegetation Communities.** Does the land have listed significant vegetation on it, or is it located within 60m of a significant vegetation community listed in Schedule 6 of LEP 2015? Significant vegetation includes areas of swamp, heath, rainforest, alluvial forests, *Blue Gum forests (E. deanii)*, dry alluvial bench woodland and many more. For the list and descriptions of these go to Schedule 6 in LEP 2015. Click [here](#) to go to the LEP.

Check if there are any vegetation constraint areas and ecological buffer areas mapped on the site by going to the Council's interactive maps. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps.

Are you aware of any listed significant vegetation communities that do not show up on the mapping? If so, put this in your submission as not all the maps have been 'ground truthed', therefore they may not be correct.

7. **Threatened or rare species/communities.** Check whether threatened or rare species have been identified on the site, or if the site is within 20m of any rare species of flora. Threatened species and threatened ecological communities are listed in Schedules 1 and 2 of the NSW [Biodiversity Conservation Act 2016](#) and 'rare' species are those on the Rare or Threatened Australian Plants (**ROTAP**) list developed by the CSIRO. The LEP offers some protections for both listings of species, and there are specific Assessments that have to be undertaken. Further information on these can be found on the **Development Approval in the Blue Mountains** page.

Are you aware of any sightings of threatened or rare flora or fauna species on the site? Is there potential habitat for them? Has the applicant checked the **Atlas of NSW Wildlife** (the Atlas)? This Atlas is the Office of Environment and Heritage's (OEH) database of flora and fauna records (plants, mammals, birds, reptiles, amphibians etc) and can be accessed through <http://www.bionet.nsw.gov.au/>. Further information about the Atlas can be found on the OEH website: <http://www.environment.nsw.gov.au/wildlifeatlas/about.htm>. All the listed threatened vegetation communities have been listed as 'Scheduled' communities in the LEP (see point 6 above).

Development proposals identified as likely to significantly affect threatened species, as determined through the '5-part test' (or 'test of significance') in the [Biodiversity Conservation Act 2016](#) (Section 7.3), or where the proposed development exceeds the Biodiversity Offsets Scheme (BOS) threshold or is to be carried out on an Area of Outstanding Biodiversity Value are assessed under the new Biodiversity Offsets Scheme (BOS). A Biodiversity Development Assessment Report (BDAR) must be submitted with a Development Application outlining how the identified biodiversity impact will be offset.

*Note that consent must be refused if the development will have serious and irreversible impacts on biodiversity.*

Further information can be found on the OEH website:  
<http://www.environment.nsw.gov.au/threatenedspecies/>

Click [here](#) for the Office of Environment and Heritage's threatened species survey and assessment guidelines.

For developments *not* triggered by the BOS threshold, evidence that it will not significantly affect threatened species must be provided in the Ecological (Flora and Fauna) Assessment along with a 'test of significance' as set out in Part 7 (7.3) of the NSW [Biodiversity Conservation Act 2016](#). This 'test' is used to determine whether a development is likely to significantly affect threatened species.

The Council's [Flora and Fauna Assessment Guidelines](#) is a useful document to refer to when trying to work out if all the information required in the Assessment has been supplied.

If these requirements and reports are not present in the Development Application documents, you can request that they be made available before you lodge your submission.

8. **Wildlife Corridors.** Have any wildlife corridors been identified in the DA documents? Do you know of any? You can check if there are any fauna corridors on the site by going to the Council's interactive maps. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps.
9. **Rock outcrops and Escarpments.** Look at the Site Analysis Plan. Have any rock outcrops been identified and their protection planned for? Is there an escarpment on the site? Check the Council's interactive maps to see if the site is in a Protected Area-Escarpment. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps. Is the site recognised as being in a Protected Area-Escarpment and planned for appropriately? Additional vegetation-related constraints may apply if the site contains Blue Mountains Escarpment Complex (defined in Schedule 6 of LEP 2015).
10. **Land Between Towns.** Is the proposed development located in a 'Land between towns' Protected Area? If you are not sure, you can look this up on the Council's interactive maps. See the **How to View BMCC Interactive Maps** page for information on how to access and



use Council's interactive maps. The Provisions relating to land between towns are aimed at protecting scenic values viewed from the Great Western Highway and maintaining the separation of towns through conserving and strengthening the bushland character of the land between towns. Will the proposed development, if it is in a land between towns area, be visible from the highway? Will there be multiple vehicle access points to the highway impacting on the bushland character?

11. **Weeds.** Has the applicant identified any weeds on site to be controlled? Did you notice any noxious or environmental weeds? Does the Landscape Plan propose planting any species listed as an Environmental Weed in **Part C2** of the [Blue Mountains Development Control Plan 2015](#). If weeds are present on site, there must be a Weed Management Strategy included in the DA. A qualified bush regeneration practitioner may be required to carry out works.
12. **Site Disturbance/excavation/sediment control.** Is the Erosion and Sediment Control Plan adequate to protect creeks and prevent sediment from moving off-site or damaging native vegetation? This is particularly an issue if there is a lot of excavation involved. The [Blue Mountains Development Control Plan 2015](#) limits the excavation allowed to 1m cut and fill unless other provisions are made.
13. **Services – Sewer, stormwater etc.** Check whether the sewer is to be connected to the reticulated system or is proposed to be an on-site disposal system or pump out. An on-site sewer is only permitted on blocks with a minimum of 4000m<sup>2</sup> of land identified as not being 'environmentally sensitive land' as defined in the LEP 2015 Dictionary. Many other controls apply to onsite and pump out systems. See **Part E1.2** of the [Blue Mountains Development Control Plan 2015](#) and the standards for the type of development in the DCP **Part F**.

What provisions have been made to deal with the stormwater? See Part C6 of the [Blue Mountains Development Control Plan 2015](#)

14. **Bushfire Protection.** What is the proposed size and location of the Asset Protection Zone (APZ)? This is the area which will be effectively cleared of all vegetation around the proposed development, regardless of what is written about clumps of trees left. If the block is mapped as bushfire prone land, the Development Application must include a bushfire threat assessment and a statement on Asset Protection Zones.

If you are aware of bushfire history in the area and on the block, you may wish to include this in your submission.

15. Is the site **adjacent to a National Park**? Does it adjoin a National Park or land reserved for public open space? Will the development impact on this and is a buffer required? Is the Asset Protection Zone fully on the block or also on the public land? There are guidelines for development adjacent to National Parks which you can access by clicking [here](#). If the development is likely to have impacts on the key 'values' of the World Heritage Area, it may trigger provisions in the federal legislation (EPBC Act). See Step 3.
16. **Cumulative impact.** Is the development going to increase the density of development significantly and therefore increase other environmental impacts? Will the sewer and water services be able to cope? Will the cumulative impact of clearing this block of land degrade the wildlife corridor to such a degree it will no longer function? How are these considerations addressed in the documents?

17. **Is the proposed development within a village precinct?** You can check this through the Council's interactive maps. See the **How to View BMCC Interactive Maps** page for information on how to access and use Council's interactive maps. Additional provisions apply to development in village precincts (see LEP 2015).
18. **Energy efficiency and other Resource Conservation Issues.** Are there any plans for energy, water, air, soil and waste?
19. **Other potential impacts?** What other impacts have become obvious at this stage, e.g. bushrock removal, hooved animals etc.

### **STEP 3: Check the rules**

Step 2 gave advice on how to look at a DA primarily through considering 19 topic areas. These topic areas also made reference to the LEP, the DCP and other relevant Acts and provisions. Step 3 gives advice on how to link your objection to a DA primarily to a planning standard or requirement (local, State or Federal).

The more specific the planning requirement/rule, the more likely it is to help you argue your case. For instance, saying that the proposed development exceeds the maximum 400m<sup>2</sup> building site coverage, for example, is more useful than referring to the broad concepts in Zone or Plan Objectives.

#### **How to use the tables for LEP and DCP clauses**

Find the issues you have identified under the topic areas in the table below and look up the relevant clauses in the LEP, DCP or other government legislation to find a development standard that applies. These clauses give the detail of what development constraints apply. You can check whether the proposed development complies with the relevant standard. Not all clauses or Acts listed below will be relevant, but it is worth looking up in case they help argue your case.

To find these clauses in *LEP 2015* click [here](#).

To find these clauses in *DCP 2015* click [here](#).

Many of the 19 topic areas are covered by provisions relating to **Protected Areas** and **Environmentally Sensitive Land (ESL)** in LEP 2015 and are included in the table below. Protected Areas are listed in Part 6 of LEP 2015. The definition of Environmentally Sensitive Land (ESL) can be found in the 'Dictionary' following Schedule 6 in LEP 2015. Additional requirements apply to subdivision e.g. a planned amendment to DCP Part F5.1 relating to access across ESL. See more below.

**TABLE: How to find clauses in LEP or DCP relevant to your issue for developments including subdivision**

Issue	Legislation	LEP 2015	
		LEP 2015 clauses	DCP 2015 clauses
<b>1. Size of Development</b> <ul style="list-style-type: none"> <li>Site coverage/ impervious surfaces</li> <li>Siting/setbacks/scale</li> <li>Flexibility in development standards</li> <li>Subdivision lot size/building scale</li> </ul>		4.4A ..... 4.6 Part 4 [NB 4.1; 4.2]	B2.4 B2.3; B3.2.2; B3.2.3 ..... F5.1
<b>2. Clearing bushland</b> <ul style="list-style-type: none"> <li>Vegetation retention, restoration</li> <li>Vegetation Management Plans</li> <li>development in cleared areas</li> </ul>	<a href="#">State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</a>  NSW 10/50 Code	Part 6	C1.1 (C2&7); C2.1(C1-3); C2.1.2; C2.1.4; C2.1.5 C5 and note C5.5(C1) E4.4
<b>3. Type of Development Permitted</b> <ul style="list-style-type: none"> <li>Zone objectives &amp; types of development permitted in each zone</li> <li>Protected area objectives &amp; criteria</li> <li>Exceptions</li> <li>Development allowed without DA</li> <li>Flexibility near zone boundary</li> </ul>	SDWC SEPP   SEPP 2008	See zone in Land use table after 2.8 ..... Schedule 1 Part 3 6.25; 5.3	.....   C1.5 (see ESL) .....
<b>4. Steep Slope</b>		Slope maps Protected Area, ESL 6.1, 6.4, 6.14(3), 6.30	C1.1 (C4); C3.6
<b>5. Creeklines/watercourses and land within 40m of top of bank of watercourses</b>   <b>Groundwater</b> (additional clauses)	<a href="#">NSW Water Management Act; Water Management (General) Regulation</a>   <a href="#">NSW State Groundwater Policy</a>	Riparian Water maps Protected Areas ESL 6.1, 6.2, 6.8, 6.14(3), 6.30 Schedule 6: 6 Blue Mountains Riparian Complex  Schedule 6: 5 (2) Blue Mountains Swamps	C1.1 (C2, C4, C6) C1.3; C1.6; C2.1.1 (C3); C2.2.1; C3.8 (C24, C25)   C6.3
<b>6. Significant Vegetation Communities (SVC)</b> (e.g. forests, heath, escarpment complexes) And land within 60m of such communities (buffers)		Biodiversity maps Protected Areas ESLs 6.1, 6.2, 6.6, 6.7, 6.14(3), 6.30 Schedule 6	C1.1 (C2, C4, C6); C1.3;  C1.5 (buffer)
<b>7. Threatened species or communities; rare plant species</b> and land within 20m of such species	NSW EP&A Act; NSW <a href="#">Biodiversity Conservation Act 2016</a> ; C'wealth	ESL 6.1, 6.2, 6.14(3), 6.30	C1.1 (C4, C6); C1.2 (C1-C4); C2.1.2  C1.5 (buffer)

	<a href="#"><i>Environmental Protection and Biodiversity Conservation Act 1999; NSW Fisheries Management Act 1994</i></a>		
8. <b>Wildlife corridors</b> <b>Fauna habitat</b>		6.3	C 1.1 (C4, C2(f)) C1.4; C2.1.1 (C1); C3.7
9. <b>Escarpments &amp; rock outcrops</b>		Scenic Values maps Protected Area (escarpment) ESL 6.1, 6.12, 6.14(3), 6.30	C 1.7
10. <b>Land Between Towns</b>		Scenic Values maps Protected Area 6.13	C2.1.4; E8.1.1
11. <b>Weeds &amp; Landscaping –</b> introduction of weeds/ control  Weed management plan			C2.1 (C1-C6) & note re: qualifications C2.1.2; C2.1.3; C2.1.4; C2.2; C2.3  C3.2-C3.5; C3.7- C3.8
12. <b>Earthworks/Site disturbance</b>  Sediment control/soil retention		6.14	E4.2, E4.4, B3.2.2 (C6-8), C1.1 C3.6, E4.3
13. <b>Services –</b> • Sewer, water, power • stormwater Additional requirements for subdivisions		6.23 6.9 6.23 (2&3)	C6 E1.2 C6.5
14. <b>Bushfire protection measures</b>  Additional requirements for subdivisions	NSW PBP EP&AA s79  NSW RFA NSW 10/50 Code	6.1 (5) 6.1 (6)  6.1(4) & (5); 4.1(F)	C2.1 (C6) C1.1 (C1, C1 note & C3) C3.5 C4
15. <b>National Park – adjacent land, impacts</b>		6.1 (2) (a) 6.1 (3)	C1.1 (C4); C1.8; C2.1.1 (C4)
16. <b>Cumulative impact</b>	NSW EP&A Act 79c		
17. <b>Village precincts - development controls</b>		Part 7	Part G
18. <b>Resource conservation -</b> energy efficiency, solar access, water, greenhouse gas waste	NSW BASIX <a href="https://www.basix.nsw.gov.au/basixcms/about-basix/legislation.html">https://www.basix.nsw.gov.au/basixcms/about-basix/legislation.html</a>	6.21	..... F1.1.4 ..... C6, E1.2
19. <b>Other impacts</b> Bushrock removal		6.15	C 2.1.1 C 2.1.2

**Key:** EP&A Act = [Environmental Planning and Assessment Act 1979](#)  
 ESL = Environmentally Sensitive Land as defined in Dictionary of LEP 2015  
 NSW 10/50 Code = [10/50 Vegetation Clearing Code of Practice](#) RFS, 2015  
 PBP = Planning for Bushfire Protection [http://www.rfs.nsw.gov.au/dsp\\_content.cfm?cat\\_id=900](http://www.rfs.nsw.gov.au/dsp_content.cfm?cat_id=900)  
 NSW RFA = [Rural Fires Act 1997](#)  
 SDWC SEPP = [State Environmental Planning Policy \(Sydney Drinking Water Catchment\)](#)  
 SEPP 2008 = [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#)

**Further state environmental planning policies and plans may apply to the proposed development:**

- [State Environmental Planning Policy No. 1](#)  
 If a State Environmental Planning Policy No. 1 (SEPP 1) objection has been lodged to vary a development standard, look at the objectives of the development standard in question and also of the zone and any relevant Protected Area. You can use this information in your submission to challenge the applicant's argument for varying the standard.
- [State Environmental Planning Policy \(Sydney Drinking Water Catchment\) 2011](#)  
 This SEPP applies to areas that drain towards this catchment. You can find out if the land is in the water catchment by referring to the Council's interactive maps. See the **How to view BMCC Interactive Maps** page for directions on how to use the maps. The SEPP's key feature is in cl. 10, which states that development consent cannot be granted unless a neutral or beneficial effect on water quality is demonstrated. Check the evidence provided by the applicant for this closely.
- [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.
- **Other Considerations under the EP&A Act, Section 79C:**
- **Likely Impacts on Natural and Built Environment**  
 Any environmental issue not already covered by the LEP or DCP could be included here.
- **Social and economic impacts** in the locality.
- **Suitability of the Site**  
 Any site suitability issue not already covered by the LEP or DCP could be included here.
- **Public Interest**

**Other State Government permits or approvals:**

It is also possible that the proposed development will require approvals or permits from other government bodies if, for instance, it is close to creeks, streams, lagoons. You can get some idea about what other government bodies need to be involved in an application and under what

circumstances by referring to the Blue Mountains City Council's *Guide to the Application Process*, which you can find by clicking [here](#).

Also refer back to the **Development Control in the Blue Mountains** and **Development Approval in the Blue Mountains** pages.

If these approvals, permits and government bodies are not identified in the Development Application, or are not exhibited with it, you can ask a Council officer about this and note it in your submission.

### **Federal government Acts that may apply:**

The federal [Environmental Protection and Biodiversity Conservation Act 1999](#) (EPBC Act) applies in very specific situations. In the Blue Mountains it is only likely to apply where the development will have, or is likely to have, a significant impact on either:

1. A nationally listed threatened species or ecological community, or
2. The key values for which the World Heritage Area was listed.

Regarding the Greater Blue Mountains World Heritage Area, the [UNESCO](#) website states that:

“The World Heritage Committee inscribed the Greater Blue Mountains Area under natural criteria (ii) and (iv).

Criteria (ii) and (iv): Australia's eucalypt vegetation is worthy of recognition as of outstanding universal value, because of its adaptability and evolution in post-Gondwana isolation. The site contains a wide and balanced representation of eucalypt habitats from wet and dry sclerophyll, mallee heathlands, as well as localised swamps, wetlands, and grassland. 90 eucalypt taxa (13% of the global total) and representation of all four groups of eucalypts occur. There is also a high level of endemism with 114 endemic taxa found in the area as well as 120 nationally rare and threatened plant taxa. The site hosts several evolutionary relic species (*Wollemia*, *Microstrobos*, *Acrophyllum*) which have persisted in highly restricted microsites.”

It is the developer's responsibility (whether a private developer or government developer such as the Council) to refer the DA to the relevant Commonwealth department for a separate assessment and approval in the specific situations described in the EPBC Act. 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.

If you think that the specific criteria described in the EPBC Act apply in the case of the proposed development and there is no reference to the EPBC Act in the DA, you can raise the matter in your submission.

### **STEP 4: Detailed site inspection**

This is the time to go back and look at how the proposal will impact on the site using the information you have gained from looking at the proposal (Step 2) as well as the criteria that will assist you to put forward a good case (Step 3).

### **STEP 5: Writing your submission**

- Be aware that your submission is not confidential.
- Note the deadline for making your submission. Make sure it arrives by then. It will not be accepted after this date unless you have received a formal approval for an extension of time.

#### **Format of submission**

It is best if you:

- Address your submission to the General Manager, Blue Mountains City Council, Locked Bag 1005, Katoomba NSW 2780.
- Quote the DA number (and address of the site if possible) in your heading (see Step 1).
- Give your full name, and sign your letter if it is a hard copy.
- Give your address.
- Date your letter.

You can either write a simple letter with your concerns clearly stated or you can attempt to address all (or some) of the criteria that council assessors will use. This is not the place to write a novel or to be emotive! A simple clearly laid out letter under headings will assist the assessing officer to take account of your concerns.

Your submission will be stronger if you can directly address the criteria (or at least the ones you are concerned with) that Council will use to assess the DA. It would also help to have some evidence to back up your objection e.g. refer to the specific clauses in the LEP and DCP to support your objection or point out discrepancies with the DA. The 'assessment criteria' framework used in Step 3 is based on that used in reports to Council. Look up a Business Paper on any DA that has come to a Council meeting to give you an idea of how issues are assessed (see also the **Development Approval in the Blue Mountains** page). As Council officers must take all the relevant criteria in planning rules into consideration when assessing the Development Application, it is useful to set out your submission in a similar way.

Either way, be specific in what you think Council should do about the issues of concern e.g. suggest what should be included in the Conditions of Consent. Even if you totally oppose the development, you can still suggest amendments and conditions in the event that the development proceeds.

Other matters to raise in your submission (in addition to the topic areas listed in Step 2 and clauses of the LEP and DCP etc. in Step 3):

- **Has Council followed the correct procedure?** Incorrect procedure can be grounds for an appeal in the Land and Environment Court against development consent.
- **Is the documentation complete?** See Step 2 for what documents you should expect to find in the DA.

- **Is the documentation accurate?** e.g. site maps, location of features like creeks, vegetation communities. Look very carefully at the scale and measurements of the site plan. Are the flora and fauna and other studies accurate? You should draw attention to inaccuracies as Council officers may not have detailed local knowledge. Developers have been known to provide Council with inaccurate site maps and/or inadequate information, so this is where your preliminary work, local knowledge and a site inspection will help.

For further tips on writing a submission, see the Environmental Defender's Office Fact Sheet [Have Your Say. Submissions, Letters and Petitions](#).

### **STEP 6: Lodge your submission**

Make sure you lodge your submission to Council by the means identified (mail, email, online form) making sure it will arrive by the nominated date. For legal reasons, your submission will not be accepted after that date.

If you have contacted the assessment officer and been granted an extension, have this confirmed in writing or email and cite/include it in your submission.

### **STEP 7: What to do next?**

You will receive an acknowledgement of your submission from Council.

Changes to NSW legislation in August 2017 saw Councils in the Greater Sydney area (including the Blue Mountains and Wollongong) stripped of their approval powers for certain large and/or contentious Development Applications (DAs). Now, certain stipulated DAs will go to an IHAP (Independent Hearing and Assessment Panel), referred to as a Local Planning Panel (LPP) in the legislation, for approval. The stipulated DAs include developments with a capital investment value of between \$5 million and \$30 million, DAs from the Council worth under \$5 million in capital investment value or from other government agencies, DAs with more than 10 objections from different households, DAs departing by more than 10% from a development standard and DAs associated with a higher risk of corruption. A panel of 4 experts will now determine these DAs. Councillors, property developers and real estate agents cannot be members of a Local Planning Panel.

*For DAs which meet the above criteria and will be determined by a Local Planning Panel:*

If you made a submission you will be invited to attend and address the meeting of the Local Planning Panel where the Development Application will be determined. Follow the instructions on how to register to speak **and by which date**. If you do not register to speak, it will be at the Panel Chair's discretion to allow you to speak. Note that this is an important change to past arrangements where you could just turn up to a Council meeting and register to speak up until half an hour before the meeting started.

You will also **not** be able to lobby Panel members prior to the Panel meeting as you were able to do with Councillors (and still can if the DA comes to a Council meeting). Panel members are prohibited from discussing the DA with members of the public.



This certainly changes how the community may now engage with the approval process on large and contentious DAs post-submission.

*For DAs which will come to a Council meeting for determination:*

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). It is unclear at this stage what kind of DAs will come to a Council meeting for determination. Certainly a DA for land rezoning will still come to Council.

If the DA comes to a Council meeting for determination you should access the Business Papers beforehand by going to <https://www.bmcc.nsw.gov.au/council/council-meetings>. The papers are available on the Wednesday of the week before the Tuesday Council meeting each month.

In this case you can contact your local Councillors to express your concerns and to arrange a formal or informal site visit before the DA is determined. Click [here](#) for the contact details of Councillors.

You can also ask Councillors to request a DA go to a council meeting for determination. Two Councillors must formally call for the DA to come to a Council meeting. Make sure they have done this! However, with the recent legislative changes, if the proposed development is contentious it will most likely be dealt with by the Local Planning Panel unless a rezoning is required.

You can speak at the Council meeting but lobbying or briefing Councillors before the Council meeting is also very important.

In either case above, if you made a submission you will also be advised of the outcome of the DA and, if it has been approved, notified of any proposed modification of the development in the future. You can access the final determination notification on the Development Application, including the conditions of consent, by clicking [here](#). The Local Planning Panel's deliberations will be available on the Council's website.

'Third party' rights to appeal against a decision by Council still apply to a decision by a Local Planning Panel.

Also have a look at the **Further Action** page for ideas about campaigning.

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