



ITEM No.	3
REPORT:	PLANNING PROPOSAL – Blue Mountains Local Environmental Plan 2015 – Draft Amendment 17 – Creativity and Culture Amendment
Reason for report	The Planning Proposal is required to be referred to a Local Planning Panel for advice as set out by the Local Planning Panels Direction – Planning Proposals under section 9.1 of the EP&A Act 1979.
Executive Summary	<p>This Council initiated Planning Proposal proposes updates to <i>Blue Mountains Local Environmental Plan 2015</i> to acknowledge the creative industries in the Blue Mountains and support local jobs and activities contributing towards being a City of the Arts. The planning proposal aims to make planning pathways more accessible to creative practitioners, particularly for small scale niche creative industries. The need for a focus on creative industries and cultural events was identified through <i>Blue Mountains 2040: Living Sustainably</i>, Council’s Local Strategic Planning Statement and aligns with the Western City District Plan.</p> <p>As a City of the Arts, Council acknowledges the challenging economic environment faced by creative practitioners, particularly in a COVID-19 climate. Council is seeking to support this industry through facilitating collaboration, reducing barriers to both creative production and presentation, and providing resources to enable our creative practitioners to connect with community.</p>
RECOMMENDATION	That the Blue Mountains Local Planning Panel support the Draft Planning Proposal for draft Amendment 17 (creativity and culture) to Blue Mountains Local Environmental Plan 2015, recognising the importance of creative industries and cultural activities to the Blue Mountains as a City of the Arts, and the opportunity for the planning system to more clearly and effectively foster these industries and activities.
Reason/s in support of the recommended decision	<p>The purpose of this Planning Proposal is to seek an amendment to the Standard Instrument Local Environmental Plan (SI LEP) and amend Blue Mountains Local Environmental Plan (LEP) 2015 to achieve the following:</p> <ul style="list-style-type: none"> A. Introduction of a land use definition and guidelines for creative industry use of spaces in town centre zones B. Facilitate pathways for arts and culture events by altering the SI LEP temporary use clause 2.8, or alternatively inserting local provisions in Part 6 of LEP 2015 specifically related to events C. Improve the clarity of home business provisions for artist studios to support home based creative industry

Policy background:

As identified in *Blue Mountains Creative Strategy 2020-2027*, the Blue Mountains is recognised as a centre of Arts and cultural practise and a haven for creatives from across Australia and the world to live, work and be inspired.

In addition, increasingly, arts experiences have a growing role as an economic driver. The Blue Mountains is a creative industries hot spot, with 7.6% of the total residential population of the Blue Mountains employed in the creative industries, compared to the NSW state average of 4.7% and the national average of 3.5%. Further, creative industries make up the third greatest contributor to the Blue Mountains Gross Regional Product at \$152 million, with the total output of local creative industries estimated at \$592 million.

This significance of the arts is reflected in *Blue Mountains Local Strategic Planning Statement* (LSPS) has been endorsed by the Greater Sydney Commission and Department of Planning, Industry and Environment, and commits itself to strengthening creativity and culture and growing the Blue Mountains as a City of the Arts (Priority 4).

Local Planning Priority 4 Actions: Strengthening Creativity, Culture and the Blue Mountains as a City of the Arts	
Action 4.4	Council will work with the NSW Department of Planning, Industry and Environment to provide greater flexibility and streamlined approval processes for events and temporary uses, through amendments to the Standard Local Environmental Plan and local controls.
Action 4.5	Council will work with the NSW Department of Planning, Industry and Environment to investigate policy options to provide studio or makers spaces within town centre areas.
Action 4.6	Council will seek to elevate the importance of culture and creativity through an update to the objectives of the Blue Mountains Local Environmental Plan 2015 to recognise cultural events.

On 9 June 2021, Council wrote to the Department of Planning, Industry and Environment, advocating for planning reform to support creative industries. It is noted that the State Government has identified the planning system as a key lever to respond to and recover from the COVID-19 pandemic, as it has actively introduced a suite of reforms to accelerate productivity and economic movement. At the local level, in addition to supporting creative industries as an important economic contributor, our long term focus is to be a place of artistic excellence and creative learning, attracting national and world-renowned artists to create in this unique environment. In a planning context, creative industries are typically smaller scale and often don't have a strong voice compared to

other industries. Council is driving these proposed changes to the planning system to support and advocate on behalf of creative industries.

Overview of proposal:

The proposed amendment aims to:

- Recognise creative studio or makers spaces as a land use, for uptake within town centres; and
- Provide greater flexibility and streamlined approval processes for events and temporary uses for creativity and culture purposes; and
- Enable standalone provisions for creative small scale home business use that is easily understood by the community

There are 3 components proposed to achieve this and each is outlined in detail in the attached Draft Planning Proposal, summarised as follows:

1. Creative industry use of spaces in the town centre zones

Rationale: It has been identified that to support creative industries, it is necessary to enable creative industry use of spaces in the town centre zones, referred to as makers spaces. The intention of a makers space is to allow a creative practitioner to make at the same premises as they sell, a land use that is not currently defined in the SILEP. This concept is the inverse of how industrial retail outlets provide for a degree of retail in industrial area. The provision of makers spaces allows a degree of creative industry in town centres, as well as to support other creative uses that may not fit neatly into existing definitions, limiting clear permissibility or assessment requirements.

2. Facilitate pathways for arts and culture events

Rationale: Community events, such as markets and festivals, currently rely on temporary use provisions for approval. However, the wording of the temporary use provisions (clause 2.8) mandated in the SI LEP sets an unreasonable test for such events. In other planning instruments, such as Blue Mountains LEP 2005, assessment of temporary uses had to consider whether *“the temporary use will not unreasonably adversely affect residential amenity”* [Clause 35(1)(d)], allowing for a merit assessment and, if supportable, suitable conditions of consent to mitigate potential impacts.

The current wording for temporary use of land in clause 2.8 of the SI LEP omits reference to “reasonable”, thereby requiring that an event have no adverse impact at all. This is unachievable given events typically involve noise and traffic impacts. However the test should be able to consider whether this is reasonable, given that it is only temporary, and what measures could be put in place to mitigate or manage those impacts. Council is requesting that the Department amend Clause 2.8 of the Standard Instrument accordingly.

Alternatively, if the Department are not open to amending the SI LEP, a new local provision in part 6 of LEP 2015 is proposed that will provide an assessment pathway, similar to the temporary use provisions, specifically for

events.

3. Improving the clarity of home business provisions for artist studios to support home based creative industry

In the Blue Mountains context, currently artist studios operate as a home business without consent. This amendment is seeking to place greater clarity around what constitutes an artist studio is for the purpose of home business. The intent of this definition is to create provisions for home based creative industries that may include activities, such as small scale art classes, artist studio tours and the like. Council, in supporting the importance of the creative arts, is seeking to ensure these activities can occur in a residential setting, provided the impact is managed in such a way that the use does not interfere with the amenity of the neighbourhood, and therefore satisfies the definition of a home business. It is expected that this definition sits as a local provision, adjunct to the existing home business definition.

It is proposed that Part 6 of *Blue Mountains Local Environmental Plan 2015* contains these local provisions, the details of which are outlined in the attached planning proposal.

The advice of the Local Planning Panel is sought on this planning proposal in line with the Local Planning Panels Direction – Planning Proposals under section 9.1 of the EP&A Act 1979, prior to it being reported to Council for endorsement.

Disclosure	This draft Planning Proposal has been initiated by Council to implement strategic policy direction. Therefore, no disclosure is required.
Declaration of interest	The Council does not have a conflict of interest in this Draft Planning Proposal.
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Report authoriser	Will Langevad, Director Environment & Planning Services

ATTACHEMENTS

1. Draft Planning Proposal LEP 2015 amendment 17
2. Copy of Letter to DPIE regarding Creativity and Culture

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
(Draft Amendment 17)



Draft Blue Mountains LEP 2015 Amendment 17: Creativity and Culture Amendment

Maintained By	City Planning Statutory Planning Team			
Version	Purpose	Modifications Made	Date	Status
1.0	Local Planning Panel Advice		6/1/2022	Draft

Prepared by Blue Mountains City Council
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Introduction

This Council initiated planning proposal seeks a number of changes to the *Blue Mountains Local Environmental Plan 2015* (LEP 2015). The focus of this planning proposal is to acknowledge the creative industries in the Blue Mountains and support local jobs contributing towards being a City of the Arts. The planning proposal aims to make planning pathways more accessible to creative practitioners, particularly for small scale niche creative industries.

A focal point on culture and creativity has the potential to diversify the Blue Mountains economy, strengthen opportunities for community engagement, as well as further promote the region as a City of the Arts and destination of choice for local and international visitation.

This Planning Proposal gives effect to strategies in the *Western City District Plan* (informed by the Greater Sydney Commission) and *Blue Mountains 2040: Living Sustainably - Local Strategic Planning Statement* (LSPS). It is consistent with the planning priorities and actions included in the *Western City District Plan* which address healthy, creative, and culturally rich and socially connected communities that celebrates the arts and supports creative industries and innovation. In support of this, the LSPS captures strengthening creativity and culture and growing the Blue Mountains as a City of the Arts as a local planning priority (Priority 4).

This planning proposal also give effect to clause 2(aa) of the *Standard Instrument Local Environmental Plan* (SILEP) “*to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts*”.

The Blue Mountains is a creative industries hot spot, with 7.6% of the total residential population of the Blue Mountains employed in the creative industries, compared to the NSW state average of 4.7% and the national average of 3.5%. Additionally, creative industries make up the third greatest contributor to the Blue Mountains Gross Regional Product at \$152 million, with the total output of local creative industries estimated at \$592 million.

In an area like the Blue Mountains, with physical constraints that can limit growth, there is limited opportunity for new facilities and infrastructure. Flexibility of use is therefore highly beneficial. Council acknowledges the challenging economic environment faced by creative practitioners, particularly in a COVID-19 climate, and is seeking to supporting this industry through facilitating collaboration, reducing barriers to both creative production and presentation, and providing resources to enable our creative practitioners to connect with community.

This planning proposal details the need for an amendment to the SILEP temporary use provisions, and outlines proposed local provisions to be contained within Blue Mountains Local Environmental Plan 2015.

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The purpose of this planning proposal is to make an amendment to the SILEP and LEP 2015. This amendment aims to:

- Recognise creative studio or makers spaces as a land use, for uptake within town centres; and
- Provide an appropriate approval pathway for events and temporary uses for creativity and cultural purposes; and
- Improve the clarity of home business provisions for artist’s studios to support home based creative industry.

The objective of this planning proposal is to give effect to the following creativity and culture Local Planning Priority 4 Actions contained in Blue Mountains Local Strategic Planning Statement.

Table 1 – extract from Blue Mountains 2040: Living Sustainably - Local Strategic Planning Statement

Local Planning Priority 4 Actions: Strengthening Creativity, Culture and the Blue Mountains as a City of the Arts	
Action 4.4	Council will work with the NSW Department of Planning, Industry and Environment to provide greater flexibility and streamlined approval processes for events and temporary uses, through amendments to the Standard Local Environmental Plan and local controls.
Action 4.5	Council will work with the NSW Department of Planning, Industry and Environment to investigate policy options to provide studio or makers spaces within town centre areas.
Action 4.6	Council will seek to elevate the importance of culture and creativity through an update to the objectives of the Blue Mountains Local Environmental Plan 2015 to recognise cultural events.

There are 3 components to the mechanisms proposed to achieve this:

- A. Introduction of a land use definition for creative industry use of spaces in town centre zones
- B. Facilitate pathways for creative industry/arts and culture events by altering the SILEP temporary use clause, or alternatively inserting local provisions, in LEP 2015 specifically related to events
- C. Improving the clarity of home business provisions for artists studios to support home based creative industry

It is proposed that Part 6 of *Blue Mountains Local Environmental Plan 2015* contains these local provisions.

PART 2 EXPLANATION OF PROVISIONS

The planning proposal has three components, as outlined below:

A. Creative industry use of spaces in the town centre zones

It has been identified that to support creative industries, it is necessary to enable creative industry use of spaces in the town centre zones, often referred to as makers spaces. The intention of a makers space is to allow a creative practitioner to make at the same premises as they sell, a land use that is not currently defined in the SILEP. This concept is the inverse of how industrial retail outlets provide for a degree of retail in industrial area. The provision of makers spaces allows a degree of creative industry in town centres, as well as to support other creative uses that may not fit neatly into existing definitions, currently limiting clear permissibility or assessment requirements.

It should be noted that if the proposed **creative industry** definition, as published by the Department in the Proposed Employment Lands Framework Position Paper (May 2021) package proceeds, then this definition will likely adequately meet the intent and objectives.

<p>Creative industry New definition Sub-term of 'light industry'</p>	<p>Insert a new definition that provides a catch all definition for the creative industries and their activities and outputs.</p> <p>The definition will capture occupations that commonly identify as creative including:</p> <ul style="list-style-type: none"> • traditional and digital media; • fine arts and crafts; • design; and • creative products <p>and extends to the activities carried out including production, workshops, display/performance and sale of items.</p>	<p>Creative industries are currently not defined under the SILEP and therefore these uses are not captured clearly under the planning system. The intent of the new definition is to recognise the individual industries and activities that identify as creative.</p> <p>This definition builds on definitions in local creative industries strategies and plans. Please note creative industries may include an 'industrial retail outlet'</p>
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Extract: definition per Proposed Employment Lands Framework Position Paper (May 2021)

However, in the event that the proposed **creative industry** definition does not proceed or is significantly altered, a local **makers space** definition such as below is proposed as part of a new local provision to be added to Part 6 of LEP 2015.

This proposed new local provision, including a local makers spaces definition, seeks to enact opportunities for creative uses of town centres spaces that are appropriate in scale, and which contribute positively to the amenity and activation of the centre.

The intent of this clause is to give effect to action 4.5 of the LSPS: Council will work with the NSW Department of Planning, Industry and Environment to investigate policy options to provide studio or makers spaces within town centre areas.

Its objective is to ensure that the uniquely creative community of the Blue Mountains is recognised in legislation, with pathways available for practitioners to undertake their craft in town centre zones. To achieve this outcome and ensure that such uses are appropriate in a town centre context, specific provisions are proposed that:

- Allow for use of space to undertake crafting/creation of goods (studio space)
- Require the creative industry use in a town centre must be open to the public
- Align with active street frontage provisions

- Allows for multi-use of space, including makers spaces, retail and educational (workshops and the like) associated with the creative use
- Limit potential amenity impact

It is proposed that a local provision be added to Part 6 of LEP 2015, similar to the following, with final drafting to be confirmed with Parliamentary Counsels Office (PCO) if endorsed to be made.

Makers spaces in town centres

(1) The objective of this clause is to recognise the Blue Mountains as a City of the Arts, through providing a development pathway for the makers space use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

(2) Despite any other provision of this Plan, development consent may be granted for development on land in a town centre zone for use as a makers space.

(3) Development consent must not be granted unless the consent authority is satisfied that—

(a) the use will involve the undertaking of crafting and creation on site, can include retail, and may also incorporate workshops and the like associated with the creative use, and

(b) the use will not unreasonably adversely impact on any adjoining land or the amenity of the neighbourhood, and

(c) the use is open to the public and accords with any active street frontage provisions

(4) In this clause—

***makers space** means occupations that commonly identify as creative, including: traditional and digital media, fine arts and crafts, design and creative products and extends to the activities carried out by these creative industries, such as production, workshops, display, performance and sale of items. It does not include light industries or general industries. Makers space can include space occupied by for an artist in residence program, but not for the purposes of accommodation. It does not include light industries or general industries.*

Note: The proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.

B. Facilitate approval pathways for creative industry/arts and culture events

Community events, such as markets and festivals, currently rely on temporary use provisions for approval. However, the wording of the temporary use provisions (clause 2.8) mandated in the SI LEP sets an unreachable ‘high bar’ for such events.

In previous planning instruments (Blue Mountains LEP 2005) the Blue Mountains relied on local policy when set a reasonableness test for temporary use as follows - “*the temporary use will not unreasonably adversely affect residential amenity*” [Clause 35(1)(d)]. This allowed for a merit assessment and, if supportable, suitable conditions of consent to mitigate potential impacts.

The current wording for temporary use of land in clause 2.8 of the SI LEP omits reference to “reasonable”, thereby requiring that an event have no adverse impact at all. This is unachievable given events by their nature involve noise and traffic impacts. An assessment of temporary use should be able to consider whether this impact is reasonable and what measures could be put in place to mitigate or manage those impacts, given that it is temporary in nature.

Council is requesting that the Department amend Clause 2.8 of the Standard Instrument accordingly to introduce a reasonableness test in relation to amenity impact for temporary events, by including this reference as suggested below in red and bold.

2.8 Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*
- (3) Development consent must not be granted unless the consent authority is satisfied that—*
 - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
 - (b) the temporary use will not **unreasonably** adversely impact on any adjoining land or the amenity of the neighbourhood, and*
 - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
 - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

Note: The proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.

In the case of an amendment to the SILEP not being supported, it is alternatively proposed to amend LEP 2015 to introduce a local temporary use provision similar to clause 2.8, but with a focus on events which are of value to the local community, in Part 6. This approach would mean that the SILEP temporary use provisions would remain as is for all temporary use, and

that the proposed local provisions would provide an alternate pathway specifically for events, which recognises their value to the community and local economy.

The alternate Part 6 amendment is proposed as follows:

Part 6 Additional Local Provisions
Creativity, Culture and Blue Mountains as a City of the Arts

Use of land for cultural and creative events

(1) The objective of this clause is to recognise cultural and creative events, including music and other performance arts, through providing for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

(2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a cultural or creative event for a maximum period of 28 days (whether or not consecutive days, but if consecutive, for no longer than 9 days) in any period of 12 months.

(3) Development consent must not be granted unless the consent authority is satisfied that—

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

(b) the temporary use will not unreasonably adversely impact on any adjoining land or the amenity of the neighbourhood, and

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Note: The proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.

The purpose of this amendment, either in the SILEP or Blue Mountains LEP 2015, is to ensure flexible assessment pathways exist for creative arts and cultural activity.

This is a first step to improve the facilitation of events through the local planning framework, by ensuring that a clear merit based approval pathway exists. There is the potential to investigate local exempt provisions in the future. It is noted that consideration of local exempt provisions for events needs to be undertaken more holistically, with consideration given to ancillary components, such as roads acts approvals and the like, and how such provisions can appropriately capture the wide ranging constraints of different sites and needs and potential impacts of different events.

C. Improving the clarity of home business provisions for artists studios to support home based creative industry

In the Blue Mountains context, currently artist studios operate as a home business without consent. This amendment is seeking to place greater clarity around what an artist studio is for the purpose of home business.

The intent of this definition is to create provisions for home based creative industries that may include activities, such as small scale art classes, artist studio tours and the like. Council supports the importance of the creative arts, and is seeking to ensure these activities can occur in a residential setting, provided the impact is managed in such a way that the use does not interfere with the amenity of the neighbourhood, thereby satisfying the definition of a home business.

It is expected that this definition be included as a local provision, adjunct to the existing home business definition. The drafting will be guided by parliamentary counsel, however the following is a suggested example:

“for the purposes of a **home business** that is an artist studio, **artist studio** means...” and may include “small scale classes and artist studio tours”. This would be similar to the current clarification provided in the *home business* definition in relation to the type of retail activity that a home business includes.

It is important to note that as a home business is permitted without consent, such a use either meets the definition and can therefore occur, or it does not meet the definition, and would therefore be defined as a different use which is likely not permissible in a residential zone.

Suggested wording of the clarification of home businesses for the purpose of Artist Studios is as follows.

5.4 Controls relating to miscellaneous permissible uses

Purple: existing legislation

Red: suggested legislation

(2) **Home businesses** If development for the purposes of a home business is permitted under this Plan

(a) the carrying on of the business must not involve the use of more than 50 square metres of floor area

(b) for the purposes of a home business that is an artist studio, artist studio means a makers space that is functioning such that it satisfies all requirements of a **home business**, and may include occasional gallery tours, workshops, sale of works produced onsite and classes.

Note: The proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.

PART 3 JUSTIFICATION

This section of the planning proposal provides the rationale for the amendments and responds to questions set out in 'A guide to preparing planning proposals', published by the Department of Planning and Environment in December 2018.

Section A - A Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

This planning proposal is the result of Council's Local Strategic Planning Statement (LSPS) which strategically considers local need but are appropriate within a World Heritage setting and a City of the Arts. This proposal is consistent with actions 4.4, 4.5 and 4.6 of the LSPS. It also supports key objectives/purpose/aims of Council's *Creative Strategy 2020-2027*, the *Economic Development and Tourism Strategy 2021*, and the *Events Strategic Plan 2020-2025*.

The proposed provisions that apply to B1 Neighbourhood Centre and B2 Local Centre zones (soon to be translated to E1 Local Centre under State led Employment Land planning reforms) are consistent with the objectives of these zones to provide a mixture of compatible land uses and employment opportunities in accessible locations, as well as maintain the economic viability of towns and villages in the Blue Mountains.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, a planning proposal is the best means of achieving the intended outcome of the related LSPS actions.

On 9 June 2021, Council wrote to the Department of Planning, Industry and Environment, advocating for planning reform to support creative industries. It is noted that the State Government has identified the planning system as a key lever to respond to and recover from the COVID-19 pandemic, as it has actively introduced a suite of reforms to accelerate productivity and economic movement. At the local level, in addition to supporting creative industries as an important economic contributor, our long term focus is to be a place of artistic excellence and creative learning, attracting national and world-renowned artists to create in this unique environment. As identified in *Blue Mountains Creative Strategy 2020-2027*, the Blue Mountains is recognised as a centre of Arts and cultural practice and a haven for creatives from across Australia and the world to live, work and be inspired.

In a planning context, creative industries are typically smaller scale and often don't have a strong voice compared to other industries and there is a distinct absence of regulatory pathways. Council is driving these proposed changes to the planning system to support and advocate on behalf of creative industries.

Section B - Relationship to strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

This planning proposal is not inconsistent with the Greater Sydney Region Plan (2018), the Western City District Plan (2018) and is consistent with the Blue Mountains 2040; Living Sustainably, Council's Local Strategic Plan Statement.

A Metropolis of Three Cities – The Greater Sydney Region Plan

A Metropolis of Three Cities is the first Regional Plan developed by the Greater Sydney Commission. The Plan provides a vision and actions for managing growth in Greater Sydney and enhancing its status as a global city. The Plan envisions Sydney as three cities connected by transport links. The Blue Mountains is located in the Western City.

The planning proposal is consistent with the following objectives of the Greater Sydney Region Plan:

Table 2 – Consistency with Greater Sydney Region Plan objectives

Greater Sydney Region Plan	Consistency
Liveability objective 9 – Greater Sydney celebrates the arts and supports creative industries and innovation	The proposal encourages the provision of cultural and creative uses across town centres and within a local context, facilitating opportunities for creative and artistic expression and participation in socially connected communities.
Liveability objective 12 – Great places that bring people together	The proposal realises and celebrates the unique combination of people, potential, culture and arts that create distinctive identities and functions, contributing to fine grain activity in neighbourhoods and town centres.
Productivity objective 24 – Economic sectors are targeted for success	The proposal supports growth and intensification of creative business activity (small businesses).
Sustainability objective 29 – Environmental, social and economic values in rural areas are protected and enhanced	The proposal has considered the wide range of environmental, social and economic values within the Metropolitan Rural Area and does not compromise them, rather, it maintains and enhances the local character and bushland setting.

Western City District Plan

The Western City District Plan provides subregional objectives which stem from the Sydney Region Plan. The document also provides a list of Planning Priorities, these priorities work together to create a liveable, vibrant Western City.

The planning proposal is consistent with the following planning priorities of the Western City District Plan:

Table 3 – Consistency with Western City District Region Plan planning priorities

Western City District Plan	Consistency
Liveability planning priority W4 – Fostering healthy, creative, culturally rich and socially connected communities	The proposal encourages creative enterprise and cultural expression, and supports multi-faceted social networks and connections.
Productivity planning priority W11 – Growing investment, business opportunities and jobs in strategic centres	The proposal supports growth and intensification of creative business activity within our strategic centre Katoomba.
Sustainability planning priority W17 – Better managing rural areas	The proposal maintains and enhances the local character and bushland setting.

4. Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Living Sustainably: Blue Mountains 2040 is Council’s Local Strategic Planning Statement (LSPS) and was made on 31 March 2020 following endorsement from the GSC. The LSPS contains 9 local planning priorities. This planning proposal relates most directly to priority 4.

The LSPS details Council’s long standing planning principles and commitment to place based planning as the best means to deliver positive planning outcomes that respond to local context. Actions in the LSPS under local planning priority 4, demonstrate how Council intends to strengthen creativity and culture and promote the Blue Mountains as a City of the Arts.

This includes Council working with the NSW Department of Planning, Industry and Environment to provide greater flexibility and streamlined approval processes for events and temporary uses, through amendments to the Standard Local Environmental Plan and local controls Action 4.4), investigating policy options to provide studio or makers spaces within town centre areas (Action 4.5), and Council seeking to elevate the importance of culture and creativity through an update to the objectives of the Blue Mountains Local Environmental Plan 2015 to recognise cultural events (Action 4.6).

This planning proposal delivers on these actions.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The following table documents the application and consistency with all State Environmental Planning Policies (SEPPs) and relevant Sydney Regional Environmental Plans (SREPs).

Note:

- ¹ **Not Relevant:** This SEPP or SREP does not apply to land within LEP 2005 Draft Amendment 28
- ² **Consistent:** This SEPP or SREP applies; LEP 2005 Draft Amendment 28 meets the relevant requirements and is in accordance with the SEPP or SREP.
- ³ **Justifiably Inconsistent:** This SEPP or SREP applies; LEP 2005 Draft Amendment 28 does not meet all the requirements or may be inconsistent with this SEPP or SREP as outlined following the table

State Environmental Planning Policies in force		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
SEPP	Aboriginal Land 2019	✓		
SEPP	Activation Precincts 2020	✓		
SEPP	Affordable Rental Housing 2009	✓		
SEPP	Building Sustainability Index: BASIX 2004	✓		
SEPP	Coastal Management 2018	✓		
SEPP	Concurrences and Consents 2018	✓		
SEPP	Educational Establishments and Child Care Facilities 2017	✓		
SEPP	Exempt and Complying Development Codes 2008		✓	
SEPP	Gosford City Centre 2018	✓		
SEPP	Housing for Seniors or People with a Disability 2004	✓		
SEPP	Housing 2021	✓		
SEPP	Infrastructure 2007	✓		
SEPP	Koala Habitat Protection 2020	✓		
SEPP	Koala Habitat Protection 2021	✓		
SEPP	Kosciuszko National Park-Alpine Resorts 2007	✓		
SEPP	Kurnell Peninsula 1989	✓		
SEPP	Major Infrastructure Corridors 2020	✓		
SEPP	Mining, Petroleum Production and Extractive Industries 2007	✓		
SEPP 19	Bushland in Urban Areas	✓		
SEPP 21	Caravan Parks	✓		
SEPP 33	Hazardous and Offensive Development	✓		
SEPP 36	Manufactured Home Estates	✓		
SEPP 47	Moore Park Showground	✓		
SEPP 50	Canal Estate Development	✓		
SEPP 55	Remediation of Land	✓		
SEPP 64	Advertising and Signage	✓		
SEPP 65	Design Quality of Residential Apartment Development	✓		
SEPP 70	Affordable Housing (Revised Schemes)	✓		
SEPP	Penrith Lakes Scheme 1989	✓		
SEPP	Primary Production and Rural Development 2019	✓		

<u>State Environmental Planning Policies in force</u>		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
SEPP	State and Regional Development 2011	✓		
SEPP	State Significant Precincts 2005	✓		
SEPP	Sydney Drinking Water Catchment 2011		✓	
SEPP	Sydney Region Growth Centres 2006	✓		
SEPP	Three Ports 2013	✓		
SEPP	Urban Renewal 2010	✓		
SEPP	Vegetation in Non-Rural Areas 2017	✓		
SEPP	Western Sydney Aerotropolis	✓		
SEPP	Western Sydney Employment Area 2009	✓		
SEPP	Western Sydney Parklands 2009	✓		
SREP 20	Hawkesbury Nepean River 1997		✓	

This Planning Proposal is consistent with all relevant SEPP's. A summary of compliance with certain SEPP's is provided below.

SEPP (Sydney Drinking Water Catchment) 2011

This planning proposal is consistent with the Drinking Water Catchment SEPP. Some parcels affected by this proposal may fall within the Sydney Drinking Water Catchment, however the nature of this proposal is to limit certain development types in the Blue Mountains. This is consistent with the aims and objectives of LEP 2015 in relation to the protection of the environment (including the Sydney Drinking Water Catchment), which aim to:

(e) to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of the Blue Mountains,

(g) to preserve and enhance watercourses, groundwater, riparian habitats, wetlands and water quality within the Blue Mountains, the Hawkesbury-Nepean River catchment and Sydney's drinking water catchments, and

(h) to prescribe limits to urban development having regard to the potential impacts of development on the natural environment and the provision, capacity and management of infrastructure.

This planning proposal does not adversely impact on water quality.

SREP No.20 Hawkesbury-Nepean River (No.2 – 1997)

This planning proposal is consistent with the SREP 20. A key element of LEP 2015 is the recognition and protection of the Blue Mountains National Park and environment which surround the urban areas of the City, including strong stormwater controls. Nothing in this planning proposal seeks to diminish or contradict these provisions.

SEPP (Exempt and Complying Development Codes) 2008

The planning proposal is consistent with provisions related to creative uses in the Exempt and Complying Development Codes.

6. Is the planning proposal consistent with applicable Directions by the Minister (previous s.117) Directions

The following table provides a summary of the application and consistency with Directions by the Minister.

Note:

- ¹ **Not Relevant:** This direction does not apply to land within LEP 2005 Draft Amendment 28
- ² **Consistent:** This direction applies; LEP 2005 Draft Amendment 28 meets the relevant requirements and is in accordance with the direction.
- ³ **Justifiably Inconsistent:** This direction applies, but LEP 2005 Draft Amendment 28 does not meet all the requirements or may be inconsistent with this direction as outlined following the table.

<u>Directions by the Minister (previous s 117(2))</u>	NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
1. EMPLOYMENT AND RESOURCES			
1.1 Business and Industrial Zones		✓	
1.2 Rural Zones	✓		
1.3 Mining, Petroleum Production and Extractive Industries	✓		
1.4 Oyster Aquaculture	✓		
1.5 Rural Lands	✓		
2. ENVIRONMENT AND HERITAGE			
2.1 Environmental Protection Zones	✓		
2.2 Coastal Management	✓		
2.3 Heritage Conservation	✓		
2.4 Recreation Vehicle Areas	✓		
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	✓		
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT			
3.1 Residential Zones		✓	
3.2 Caravan Parks and Manufactured Home Estates	✓		
3.3 Home Occupations		✓	
3.4 Integrating Land Use and Transport	✓		
3.5 Development Near Regulated Airports and Defence Airfields	✓		
3.6 Shooting Ranges	✓		
3.7 Reduction in non-hosted short term rental accommodation period	✓		
4. HAZARD AND RISK			
4.1 Acid Sulfate Soils	✓		
4.2 Mine Subsidence and Unstable Land	✓		
4.3 Flood Prone Land	✓		
4.4 Planning for Bushfire Protection	✓		
5. REGIONAL PLANNING			
5.1 Implementation of Regional Strategies	✓		
5.2 Sydney Drinking Water Catchments		✓	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	✓		

<u>Directions by the Minister (previous s 117(2))</u>	NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	✓		
5.9 North West Rail Link Corridor Strategy	✓		
5.10 Implementation of Regional Plans		✓	
5.11 Development of Aboriginal land Council land	✓		
6. LOCAL PLAN MAKING			
6.1 Approval and Referral Requirements	✓		
6.2 Reserving Land for Public Purposes	✓		
6.3 Site Specific Provisions	✓		
7. METROPOLITAN PLANNING			
7.1 Implementation of A Plan for Growing Sydney		✓	
7.2 Implementation of Greater Macarthur Land Release Investigation	✓		
7.3 Parramatta Road Corridor Urban Transformation Strategy	✓		
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	✓		
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	✓		
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Plan	✓		
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	✓		
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	✓		
7.9 Implementation of Bayside West Precincts 2036 Plan	✓		
7.10 implementation of Planning Principles for the Cooks Cove Precinct	✓		

This planning proposal is consistent with all relevant Directions by the Minister as detailed below.

Direction 1.1 Business and Industrial Zones

The planning proposal supports employment growth and viability of creative industries and is consistent with the objectives of this Direction.

Direction 2.1 Environment Protection Zones

The planning proposal is consistent with the objectives of this Direction as any land affected by the proposal which contains environmentally sensitive land will be subject to the provisions of LEP 2015 clause 6.1 *Impact on Environmentally Sensitive Land* and will be assessed in detail.

Direction 3.1 Residential Zones and Direction 3.3 Home Occupations

This amendment is consistent with the objectives of this Direction, as it does not change the permissibility of any uses within the residential zones. The proposal only seeks to introduce provisions under the existing home business definition in the SILEP.

Direction 5.2 Sydney Drinking Water Catchment

This amendment is consistent with the objectives of this Direction.

Direction 5.10 Implementation of Regional Plans

The planning proposal gives effect to relevant regional plans.

Section C - Environmental, Social and Economic Impact

- 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No, the proposal will not create adverse impact to critical habitats, threatened species, populations, ecological communities and their habitats.

- 8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

LEP 2015 contains sufficient controls for the protection of the environment, and nothing in this amendment seeks to diminish or contradict these provisions.

- 9. Has the planning proposal adequately addressed any social and economic effects?**

This planning proposal seeks to make an amendment to LEP 2015 by introducing provisions for creative practitioners and seeks to support them through facilitating collaboration, reducing barriers to both creative production and presentation and providing resources to enable our creative practitioners to connect with community.

It is expected that there would be positive social and economic impacts directly linked to this planning proposal.

Section D - State and Commonwealth Interests

- 10. Is there adequate public infrastructure for the planning proposal?**

Yes, this planning proposal is unlikely to result in additional development capacity that would increase the demand for public infrastructure.

- 11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with State and Commonwealth public authorities will be undertaken in accordance with the gateway determination. It is not anticipated that there would be anything contained in this amendment that would be a significant concern to State or Commonwealth authorities.

PART 4 MAPPING

The Planning Proposal does not seek to amend any maps within the Blue Mountains Local Environmental Plan 2015.

PART 5 COMMUNITY CONSULTATION

The Planning Proposal and draft LEP amendments will be publicly exhibited for a period of least 28 days or in accordance with the Gateway Determination and Council's Community Participation Plan. Notification will be in accordance with the directions of the Gateway Determination. Notification of the Proposal will also be placed in the local newspaper and the exhibition material available made available on Council's as well as hard copies if possible given the COVID-19 restrictions.

At the conclusion of the exhibition period, a report will be presented to Council detailing the submissions received.

PART 6 PROJECT TIMELINE

A nominal time period for the preparation, exhibition, and making of the amendment is:

January 2022	Planning Proposal reported to the Local Planning Panel for advice
February 2022	Planning Proposal reported to the Council for endorsement
March 2022	Submission of planning proposal to DP&E (for the GSC) for 'gateway review' of draft Amendment to LEP 2015
May 2022	Gateway determination issued
June – July 2022	Public exhibition of draft Amendment to LEP 2015
August – September 2022	Council review of submissions to draft Amendment to LEP 2015
November 2022	Report prepared for the Council to consider the result of the community consultation including any changes to this amendment. Planning Proposal and relevant supporting information forwarded to PCO to be made under delegation.
December 2022	Draft Amendment to LEP 2015 to be made



9 June 2021

Reference File: 21/105364

Marcus Ray
Department Group Deputy Secretary, Planning and Assessment
Department of Planning, Industry & Environment
GPO Box 39
SYDNEY NSW 2001

By Email: Marcus.Ray@planning.nsw.gov.au

Dear Mr Ray

SUBJECT Planning Reform to support Creative Industries

I am writing to invite a conversation regarding ways in which the State Government can work with Council in supporting creative industries. Specifically, Council is looking at changes to the planning framework to make it easier for cultural events. Council is also seeking to recognise creative industries in planning land use definitions, to provide clear pathways for creative activities. However, this will be pursued through the Department's employment land zone reform process.

Blue Mountains is a City of the Arts and Council acknowledges the challenging economic environment faced by creative practitioners. Council is seeking to support them through facilitating collaboration, reducing barriers to both creative production and presentation, and providing resources to enable our creative practitioners to connect with community.

The Blue Mountains is a creative industries hot spot, with 7.6% of the total residential population of the Blue Mountains employed in the creative industries, compared to the NSW state average of 4.7% and the national average of 3.5%. Additionally, creative industries make up the third greatest contributor to the Blue Mountains Gross Regional Product at \$152 million, with the total output of local creative industries estimated at \$592 million.

In addition, Blue Mountains Local Strategic Planning Statement (LSPS), endorsed by the Greater Sydney Commission and Department of Planning, Industry and Environment, commits itself to strengthening creativity and culture and growing the Blue Mountains as a City of the Arts (Priority 4).

The specific short term actions within the LSPS, that are also the subject of this letter, are detailed in the below table:

Local Planning Priority 4 Actions:

Strengthening Creativity, Culture and the Blue Mountains as a City of the Arts

Action 4.4	Council will work with the NSW Department of Planning, Industry and Environment to provide greater flexibility and streamlined approval processes for events and temporary uses, through amendments to the Standard Local Environmental Plan and local controls.
Action 4.5	Council will work with the NSW Department of Planning, Industry and Environment to investigate policy options to provide studio or makers spaces within town centre areas.
Action 4.6	Council will seek to elevate the importance of culture and creativity through an update to the objectives of the Blue Mountains Local Environmental Plan 2015 to recognise cultural events.

Council is considering a planning proposal to enact changes to Blue Mountains Local Environmental Plan 2015 that would facilitate these LSPS actions.

This in part, would require changes to the Standard Instrument - Principal Local Environmental Plan (SI LEP), therefore Council is raising this matter early with the Department. Changes to the SI LEP would require a review of:

- Clause 2.8 Temporary use of land
- Standard instrument definitions to consider different creative industries

Clause 2.8 Temporary use of land

While it is acknowledged that the SI LEP has a non-mandatory provision for temporary use of land, the test at Cl.2.8(3)(b), that *the use will not adversely impact on any adjoining land or the amenity of the neighbourhood*, is especially challenging, particularly for events which by their nature often involve music, traffic generation and the like. The clause could be modified to set the bar at 'unreasonably impact' or similar, to allow pragmatic application.

Such an approach would also enact the Aims of the SI LEP Cl.1.2(2)(aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts*.

Improving the temporary use of land provisions in the Standard Instrument will ensure appropriate development pathways and contribute to the creative culture built through ephemeral events. More than 150 such events are held across the Blue Mountains each year (prior to COVID), many with an arts or creative focus. The number and nature of these events support tourism and the local economy, but are also a fundamental community connector.

Standard instrument definitions

It is understood that the Department, under the proposed employment land zones reform, has initiated a review and update of SI LEP definitions, including proposing a new creative industry term. Recognising the important role of creative industries to our culture, community and economy by amending the SI LEP definitions is supported.

Council has identified examples of the types of uses we are seeking to ensure are captured by the planning system, including collaborative working spaces, maker's spaces and artist studios, with retail permissibility. These are likely to go beyond the

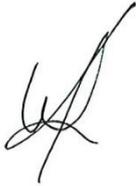
creative industries definition proposed. This will be detailed as part of a submission to the Proposed Employment Zones Reform.

However, given that the proposed new creative industry definition is part of a broader reform package, it is necessary to highlight its importance here, and raise Council's desire to pursue this change separate to the employment land zone reform if necessary.

We note that the State Government has identified the planning system as a key lever to respond to and recover from the COVID-19 pandemic, as it has actively introduced a suite of reforms to accelerate productivity and economic movement. At the local level, in addition to supporting creative industries as an important economic contributor, our long term focus is to be a place of artistic excellence and creative learning, attracting national and world-renowned artists to create in this unique environment. In a planning context, creative industries are typically smaller scale and often don't have a strong voice compared to other industries. Council is driving these proposed changes to the planning system to support and advocate on behalf of creative industries.

We look forward to your feedback on this matter. Please do not hesitate to contact Kim Barrett, City Planning Manager on 4780 5591 or kbarrett@bmcc.nsw.gov.au should you wish to discuss further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'WILL LANGEVAD', with a stylized flourish at the end.

WILL LANGEVAD
Director Environment and Planning Services