



# **Mayoral Minute MM2 Ordinary Meeting**

**Venue:           Administrative Headquarters  
                      Civic Place  
                      Katoomba**

**Meeting:       7.30pm 19 May, 2015**





**ORDINARY MEETING**

**19 MAY 2015**

**AGENDA**

<b>ITEM NO.</b>	<b>PAGE</b>	<b>SUBJECT</b>	<b>COMMENTS</b>
		<b><u>MINUTE BY MAYOR</u></b>	
MM2	4	The Standard Instrument Local Environment Plan (LEP) for the Blue Mountains	

ITEM NO: MM2

SUBJECT: THE STANDARD INSTRUMENT LOCAL ENVIRONMENT PLAN (LEP) FOR THE BLUE MOUNTAINS

FILE NO: F09164 - 15/89631

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**Delivery Program Link**

*Principal Activity:* Using Land

*Service:* Land Use Management

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**Recommendations:**

1. *That the Council seeks urgent confirmation from the Minister and from the Department of Planning and Environment that the undertakings given to the Council and its community regarding the incorporation of the key provisions of the Blue Mountains planning framework will be met; and*
  2. *That the Council make representations to the local members of parliament, the Hon Stuart Ayres, Member for Penrith and Trish Doyle, Member for Blue Mountains.*
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**Mayoral Minute**

Councillors are familiar with the undertakings that successive representatives of the NSW Government have given to the Council and its community, assuring the Council that the Standard Instrument as it applies to the Blue Mountains, will be flexible enough to retain the current land use planning framework.

The staff of the Department of Planning and Environment have worked closely with the Council over the last 2 years to prepare a plan that accommodates all of the key provisions that were the subject of negotiation with several Ministers of Planning and senior Departmental staff. Those provisions relate to fundamental aspects of the Blue Mountains planning framework such as:

- Compliance with objectives
- Flexibility in development in E2 zone
- Stormwater quality management
- The protection of significant vegetation communities
- Recognition of period housing areas
- The inclusion of a residential character zone
- Place outcome objectives for our villages.

Only one of the key provisions was understood to be at risk, the need for a new land use zone to protect residential character: the *R6 Residential Character zone*. In that instance, whilst the Minister was supportive of the need for a mechanism to protect these character areas, the implementation of the zone within the Standard Instrument was subject to the consideration of a detailed case which was submitted by the Council in October last year.

The Council and the community have relied upon the undertakings given by the NSW Government to accommodate the key provisions required to translate the current Blue Mountains planning framework. The Council has proceeded in good faith to prepare, exhibit and adopt a draft LEP on that basis. The final planning proposal was submitted to the Government in November 2014.

Regretfully, at a meeting with Department of Planning Legal Branch on Friday 15 May 2015, it appears that the Department are no longer advocating for the inclusion of most, if not all, of those key provisions. They advised the staff of the Council that the Department will defer to Parliamentary Counsel (PC) with respect to these matters.

The Council formally requested review by PC early in the process to avoid this late objection being raised. Despite the Council's representations in that regard, PC did not provide feedback on the Draft LEP 2013. However, in response to the Council's concerns, the Deputy Director General of the Department, on one occasion to the Minister, confirmed that he did not consider that there would be a legal impediment to achieving the requested outcomes. He confirmed that the Department is the arbiter of the policy position. The jurisdiction of PC is confined to legal drafting issues.

Notwithstanding that advice from the Department, the Council has taken its own legal advice with respect to the drafting of the DLEP, and that advice indicates that the legal drafting is generally appropriate.

The meeting of Friday 15 May 2015 was particularly concerning because the Departmental representatives advised the Council officers that the Minister, as of last week or so, requires that all Standard Instrument Plans to be made by 30 June, 2015.

It must be emphasised that this advice is only verbal thus far. However, in the event that the advice proves to be correct, that occurrence would be entirely unacceptable. A third of submissions to DLEP 2013 stated that if there are major changes to the DLEP that they sought re-exhibition of the plan, with a majority of those also calling for a public hearing in that circumstance.

The Council and its community proceeded in good faith to prepare and exhibit the draft LEP on the basis of undertakings given to ensure that the planning framework for the Blue Mountains would be retained in the conversion to the Standard Instrument format. The challenges put to staff in the meeting of last Friday, suggest that the undertakings given in that regard may not now be met. Given the seriousness this is not an issue where the Council can afford to be complacent.

The final Planning Proposal has been with the Department since November 2014, and no feedback received until last week. If the Department now steps away from their undertakings, the timeframe of plan gazettal by 30 June 2015; is not achievable. The Council and its community will not have an opportunity to consider and respond to the changes to the DLEP that are now foreshadowed. The Council has also committed substantial resources to proceed with the Draft DCP concurrently with the DLEP and some of the proposals being put by Legal Branch on Friday will require the DCP to be reworked and potentially re-exhibited.

It is impossible for the Council to program the finalisation of the DLEP without written details from the Department as to the objections to the plan and alternative approaches required by Legal and Parliamentary Counsel. Deletion of those key provisions may generate a need for re-exhibition and a public hearing.

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