



ITEM No. 2.4

REPORT: **DEVELOPMENT APPLICATION No. S/25/2020 for a one into two lot subdivision at 21 Jubilee Street, KATOOMBA NSW 2780**

Reason for report The proposal contravenes a standard imposed by an environmental planning instrument by more than 10% or a non-numerical standard.

RECOMMENDATION

1. The panel accepts that the request under Clause 4.6 of Local Environmental Plan 2015, to vary the minimum lot size standard applicable to the site under Clause 4.1 of Local Environmental Plan 2015, has demonstrated that there are sufficient environmental planning grounds to justify the non-compliance with the development standard and that it is unreasonable and unnecessary to require compliance in this instance as the proposed development will be consistent with the objectives of the minimum lot size clause, the R2 zone objectives and the Environmental Planning and Assessment Act 1979.
2. That the Development Application S/25/2020 for a one into two lot subdivision on 21 Jubilee Street, KATOOMBA NSW 2780 be determined in accordance with s4.16 of the *Environmental Planning and Assessment Act*, by the granting of consent subject to the conditions stated in Part 3 of this report.

Reason/s in support of the recommended decision

1. The proposed one into two lot subdivision is within an existing developed area of Katoomba, close to facilities, and with all essential services available to the site. Each lot has separate access to and from a public street.
2. The proposal creates two regular shaped lots that, despite proposed Lot 1 not complying with the minimum lot size control of 720m², are compatible with the subdivision pattern and lot sizes in the street and surrounding area.
3. Despite proposed Lot 1 being less than the minimum lot size of 720m², it is currently accommodating a dwelling that achieves all relevant LEP & DCP controls.
4. The application will provide for an inter-allotment drainage design and easement which will provide for appropriate drainage for each lot as required.
5. The site has a manageable environmental slope constraint and while bushfire prone may be managed as an Asset Protection Zone along with the adjoining southern lot. There would be no adverse impacts on the natural or built environment.

Disclosure	Disclosure of any political donation and/or gift - No
Declaration of interest	No conflict of interest.
Report author/s	Paul Anzellotti, Senior Planner Byron Tully, Program Leader Commercial Development Assessment Alex Williams, Manager Development & Building Services
Report authoriser	William Langevad, Director Environment & Planning Services
PART 1	Development proposal
PART 2	Council assessment
PART 3	Proposed conditions of consent

PART 1: Development proposal

Applicant	Mr E Ramia
Land owner	Mr E Ramia
Location	21 Jubilee Street, KATOOMBA NSW 2780
Lot & DP	Lot 32 DP 6853
Date lodged	22 August 2020
Value of works	\$19,800.00
Proposal in detail	<p>The development proposal seeks approval for a one (1) into two (2) lot subdivision at No. 21 Jubilee Street, Katoomba. Specific details in regard to the proposed subdivision are as follows:</p> <ul style="list-style-type: none"> • The subject site currently has a total area of 1,321.2m² with a dual street frontages onto Jubilee Street and Whitton Street respectively. • The subject site is rectangular in shape with a width of 16.46m and depth of 80.26m. • Proposed lot 1 fronts onto Jubilee Street with a total area of 601.2m², a lot width of 16.46m and depth of 36.53m. • Proposed lot 2 fronts onto Whitton Street with a total area of 720m², a lot width of 16.46m and depth of 43.74m. • A 1m wide proposed drainage easement is to be provided along the entire length of the northern side boundary for proposed lot 2 draining to Whitton Street to facilitate future development of each proposed new lot. • An existing cottage fronting onto Jubilee Street is to remain on proposed lot 1. • The application has been accompanied by a Plan of Management signed by the adjoining owner to maintain an Asset Protection Zone for bushfire purposes at No. 58 Whitton Street, Katoomba (directly adjoining the subject site to the south).
Departure or variation to a development standard	The applicant has lodged a request to vary the development standard cl 4.1 – Minimum subdivision lot size of Local Environmental Plan 2015 by 16.5%.
Supporting documentation	<p>The plans and documents lodged are considered sufficient to enable assessment of the application. The application is supported by:</p> <ul style="list-style-type: none"> ○ Proposed subdivision plan prepared by RAMCO Pty Ltd ○ Stormwater drainage plans prepared by Wehbe Consulting ○ Statement of environmental effects prepared by Tailored Property Solutions Pty Ltd ○ Bushfire risk assessment report prepared by Advanced Bushfire Performance Solutions ○ Arboricultural Assessment prepared by NSW Trees Arboricultural Consultants

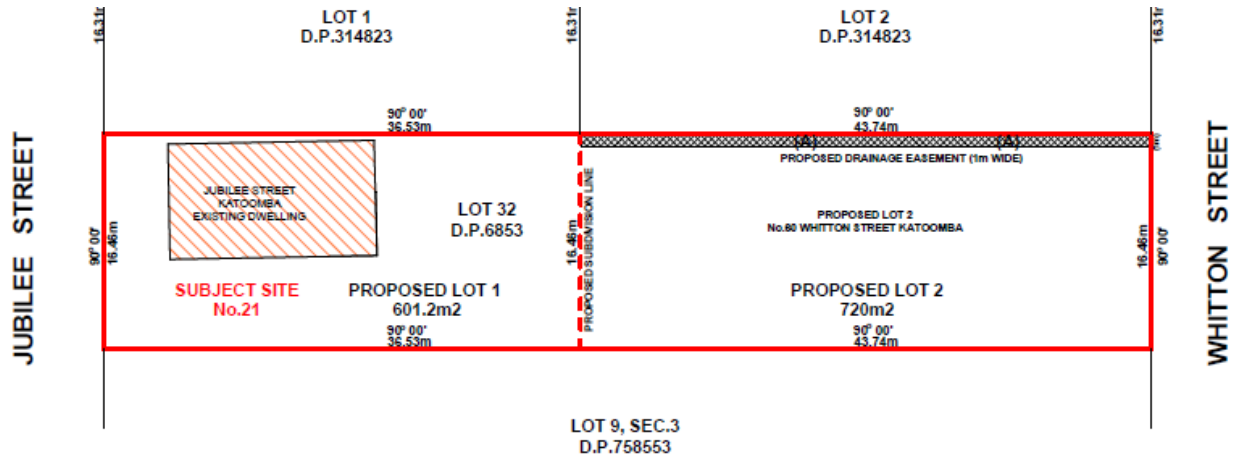
- Clause 4.6 Variation request

[Documentation online](#)

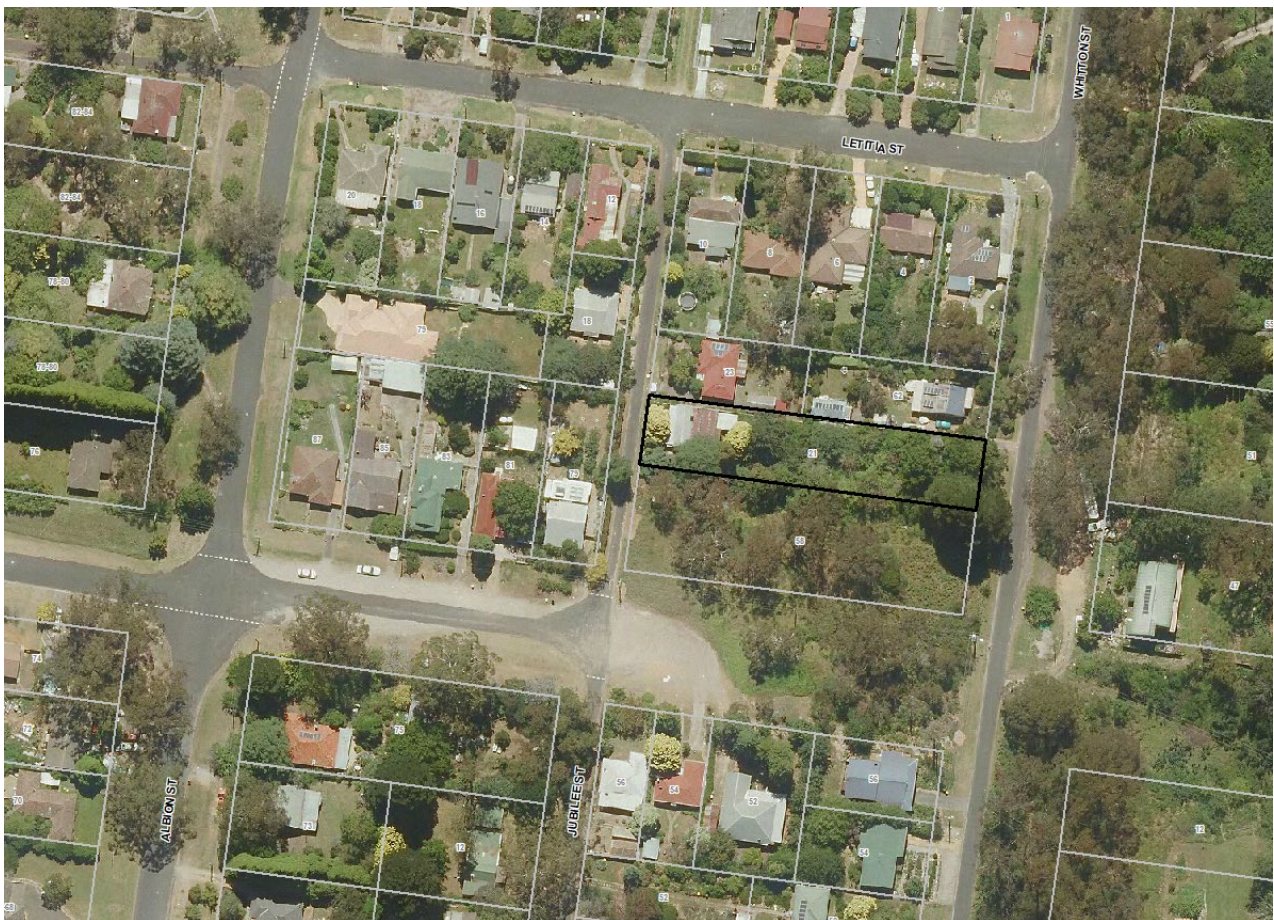
Plans to scale and key documents lodged with the application can be viewed online. Go to www.bmcc.nsw.gov.au/development – Track and View applications. Search and select S/25/2020.

Reduced site and elevation plans are below.

Site plan



Aerial



PART 2: Council assessment

2.1 Overview and summary of issues

Location	21 Jubilee Street, KATOOMBA NSW 2780
Lot & DP	Lot 32 DP 6853
Zoning	R2 Low Density Residential
Characterisation of use	Subdivision
Permissibility	Subdivision is permissible with consent in the R2 zone.
Type of development	Integrated
Applicable environmental planning instrument/s	<ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Sydney Regional Environmental Planning Policy 20: Hawkesbury-Nepean River ○ SEPP (Koala Habitat Protection) 2021 ○ Local Environmental Plan 2015 ○ Development Control Plan 2015
Applicable additional local provisions	<ul style="list-style-type: none"> ○ Protected area – slope constraint
Bushfire prone land	The property is mapped as bushfire prone.
Heritage significance	The property is not listed as a heritage item nor is it within a heritage conservation area.
Aboriginal significance	No Aboriginal objects are recorded or Aboriginal places declared in or near the subject property.
Potentially contaminated land	The land is not listed on the Council’s potentially contaminated land register and none of the activities that may cause contamination, listed in Table 1 of Planning NSW’s Managing Land Contamination Planning Guidelines, are being or are known to have been carried out on the site.
Site description	<p>The subject site is legally known as Lot 32 in DP 6853 and has a postal address of 21 Jubilee Street, Katoomba. The site maintains two separate lot frontages onto Jubilee Street and Whitton Street respectively. The site is rectangular in shape with a width of 16.46m to both Jubilee and Whitton Streets and an overall length of 80.26m.</p> <p>The site currently maintains a single storey weatherboard cottage fronting Jubilee Street. The site has a consistent fall of 10% from west to east (Jubilee Street to Whitton Street) with water and sewage services provided to both frontages. A number of non-native mature trees are located on the site primarily in the vicinity of both street frontages. These trees consist of Radiata pines, Liquid ambers, Himilayan ceder and Hinoki cyprus.</p> <p>The subject site is predominately surrounded by lots of varying sizes generally occupied by single occupancy dwellings. Directly adjoining the site to the north are two lots being 23 Jubilee Street and 62 Whitton Street while directly</p>

adjoining the site to the south is a vacant lot being 58 Whitton Street.

Development history / background

A preliminary assessment was conducted of the application and a request for additional information sent on 4 September 2020. Specific issues raised in this correspondence requested the provision of an acceptable cl 4.6 variation request as well as clarification of the overall lot variation requested. A further request for information was forwarded to the applicant on 14 September 2020 in relation to landscaping matters as well as issues raised by the NSW Rural Fire Services. The NSW RFS issues can be summarised as follows:

1. *The proposal in its current form referencing PBP 2006 ,does not conform to the specifications, or justify any deviations from Planning for Bush Fire Protection 2019, accordingly the NSW Rural Fire Service requests the consultant to review and update their assessment and re-lodge it through Council for further consideration and;.*
2. *The Bushfire Consultant is to provide additional information relating to the use of off site APZs, as part of their separation distance, across the adjoining vacant allotment towards the south. In order for the Consultant to utilise this area and classify it as being managed, they should substantiate the management by obtaining either a Plan of Management available from the managing authority or evidence of a Section 88b instrument of the Conveyancing Act 1919 being created and registered on Title for the vegetation manageable of the land to an APZ standard in perpetuity, establishing and maintaining an IPA in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.*

In response to the issues raised by Council and the NSW RFS the applicant provided for a revised 4.6 variation request, arboricultural report and Plan of Management for No. 58 Whitton Street signed by the present owner.

Following a re-referral of the application to both Council sections and the NSW RFS, further responses were provided with the NSW RFS General Terms of approval provided on 8 February 2021.

The application has also been provided with further information in regard to clarifying the existing ownership of the adjoining lot (No. 58 Whitton Street) in relation to the accompanying signed Plan of Management.

City wide infrastructure contribution

The Citywide infrastructure policy applies to the site but a contribution is not applicable in this instance due to the cost of the proposed works.

Referral authorities

Comments were sought and obtained from:

- NSW Rural Fire Services
- Sydney Water
- Council's Development Engineers
- Council's Environmental/Landscape Section

These comments have been included in the report.

Notification period

The application was notified to adjoining owners and published in the local paper for the period between 9 September 2020 and 23 September 2020.

Number of submissions

No submissions were received during the notification period.

Summary of assessment issues

Key issues determined in the assessment are:

- Variation to minimum lot size standard
- Use of adjoining southern lot as an inner protection area for bushfire purposes.
- Stormwater considerations
- Arboricultural considerations

Assessment issues are detailed below.

2.2 Evaluation

The application has been assessed in accordance with *s4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act)*. Only those provisions relevant to the proposed development have been addressed.

State Environmental Planning Policy (SEPP) – s4.15(1)(a)(i)

The following table provides for an assessment against the provisions applicable State Environmental Planning Policies.

SEPP 55 – Remediation of Land

Consideration has been given to whether the land is contaminated, as required by cl.7 of the SEPP.

Potentially contaminated land	The land is not listed on the Council’s potentially contaminated land register and none of the activities that may cause contamination, listed in Table 1 of Planning NSW’s Managing Land Contamination Planning Guidelines, are being or are known to have been carried out on the site.
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SEPP (Koala Habitat Protection) 2021

Sections	Discussion	Compliance Y/N
11 & 12	The SEPP policy does not prevent Council from granting consent as the site is under the prescribed size identified under Section 11 of this policy. The site is not subject to an approved Koala Plan of Management and is not land that contains core Koala habitat, as identified under Section 12 and schedule 2 of this policy.	Y

Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River

Standard	Discussion	Compliance Y/N
Impact of development on drinking water sub	The land is located in the Grose River sub catchment. The proposal has been designed to comply with general planning	Yes

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Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River		
Standard	Discussion	Compliance Y/N
catchment	considerations and the specific planning policies and related recommended strategies which are applicable to the proposed development, including water quality, water quantity and urban development.	

Local Environmental Plan 2015 [LEP2015] – s4.15(1)(a)(i)

The proposed development has been assessed against the provisions of LEP 2015 with significant points identified and discussed below.

Part 1 Preliminary			
Clause	Standard	Discussion	Compliance Y/N
1.2	Aims of Plan	<p>The proposal complies with the aims of the LEP. In particular it complies with the following:</p> <ul style="list-style-type: none"> to maintain the unique identity and values of the “City within a World Heritage National Park”, to provide a clear framework for the development of land that is consistent with, and promotes the principles and practices of, ecologically sustainable development, to meet the needs of residents, visitors and the business community through the provision of an appropriate balance of land uses and built forms, to ensure that development does not result in adverse impacts on the values of the Greater Blue Mountains World Heritage Area, to promote the provision of accessible, diverse and affordable housing options to cater for the changing housing needs of the community, 	Yes

Part 2 Permitted or prohibited development			
Clause	Standard	Discussion	Compliance Y/N
Land Use Table	Permissibility	The proposed use is categorised as subdivision. Subdivision is permissible with development	Yes

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Part 2 Permitted or prohibited development			
Clause	Standard	Discussion	Compliance Y/N
		consent.	
2.3	Zone objectives	<p>The objectives of the zone are met, in particular:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To promote residential development in locations that are accessible to services and facilities.</i> • <i>To ensure that development maintains and improves the character of residential areas in a manner that minimises impacts on existing amenity and environmental quality.</i> 	Yes

Part 4 Principal development standards				
Subdivision				
4.1	Minimum subdivision lot size	<p>A 720m² minimum subdivision lot size applies to the site.</p> <p>Proposed Lot 1, containing the existing dwelling, is 601.2m² in area.</p> <p>Proposed Lot 2 is 720m² in area</p> <p>The applicant has submitted a request to vary the minimum lot size for proposed Lot 1, in accordance with clause 4.6 of the LEP.</p> <p>Refer to further discussion under the <i>Exceptions to development standard (cl 4.6)</i> section of this table.</p>	No	
Building				
4.3	Height of buildings	Maximum 8m height	<p>The current dwelling is well below the 8m height limit.</p>	Yes
4.4	Floor space ratio	Maximum 0.35:1	<p>It is considered the vacant lot (proposed Lot 2) has sufficient space to comply with this provision.</p> <p>The existing dwelling on proposed Lot 1 has a floor area of approximately 137m², a floor space ratio of</p>	Yes

Part 4 Principal development standards	
	0.23:1.
Exceptions to development standards (cl.4.6)	
Exception requested	The applicant has requested a variation to a development standard so that one of the proposed lots (proposed Lot 1) is less than the 720m ² minimum lot size standard applicable to the site.
Exclusions	The development standard is not one of those excluded under 4.6(6) or 4.6(8).
Area of non-compliance	Proposed Lot 1 does not comply with clause 4.1(3) of the LEP, which requires the size of any lot resulting from a subdivision of land to not be less than the minimum size shown on the Lot Size Map relating to that land.
Nature and extent of non-compliance	The minimum lot size applicable to the site, as shown on the Lot Size Map, is 720m ² . Lot 1 is proposed to be 601.2m ² . This is 118.8m ² below the minimum lot size, representing a variation of 16.5%.
Objectives of the standard	The objectives of the minimum lot size standard are: <ul style="list-style-type: none"> • <i>to ensure that lots are sized to support development permitted by this Plan,</i> • <i>to provide for a range of residential lot sizes and types based on land capability and the character of the locality,</i> • <i>to ensure that each lot created in a residential subdivision contains a suitable area for the erection of a dwelling house and an appropriate asset protection zone to protect the property from the threat of bush fire,</i> • <i>to prescribe limits to urban growth by restricting subdivision of land that has limited access to services, is environmentally sensitive or forms part of the urban bushland interface,</i> • <i>to ensure that lot sizes and dimensions result in the retention, where possible, of existing vegetation and that the layout and design of new lots, including access ways, is consistent with the character of the locality.</i>
Justification	The Clause 4.6 Variation states that ... <i>the proposed non-compliant lot (Proposed Lot 1) is in keeping with a number of non-compliant lots within the immediate locality.</i> <i>Furthermore, the existing residential dwelling located on Proposed Lot 1 will maintain the existing front and side boundaries and is compliant with Council's Rear Setback Control, Site Coverage Control, Pervious Area Control and Deep Soil Control.</i> The following justification was provided, in part, in terms of being unreasonable and unnecessary: <ul style="list-style-type: none"> • <i>It is unnecessary to require 720 m² because 601sqm is more than ample to replicate the existing housing stock and even accommodate much larger dwellings using the same BMCC Council planning Controls.</i> • <i>It is unreasonable to apply the 720sqm allotment standard because only 3 of the surrounding 16 allotments to the North, West and South of the site would meet this standard.</i>

Part 4 Principal development standards

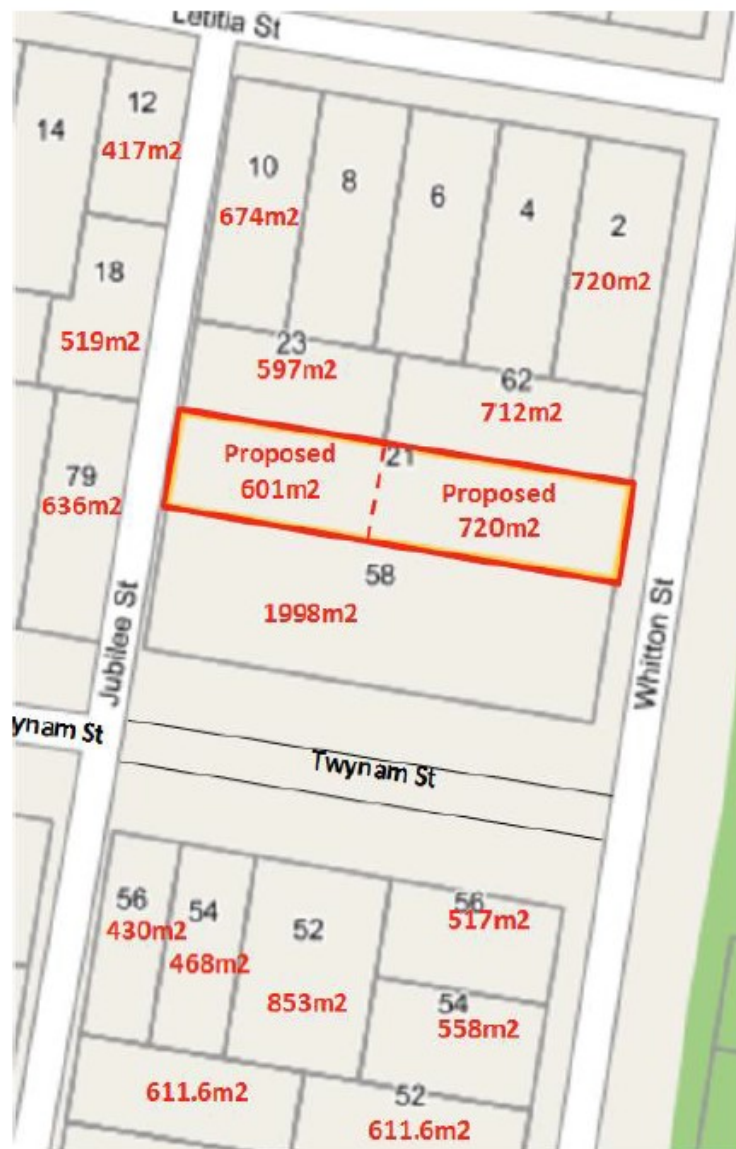
- *The properties to the East of Whitton St are larger, but these allotments have numerous environmental constraints, creeks etc and have been zoned E2 and E4 by Council.*
- *It is unnecessary to have a standard when the majority of the properties in the area do not conform to it.*
- *Apart from the subject site, 13 out of the 16 allotments surrounding the site do not have the required area of 720 m²*
- *A significantly predominant number of lots within the immediate locality, mapped as requiring a Minimum Subdivision Lot Size of 720m² fall below the required Development Standard.*
- *The immediately adjoining properties to the north, whose line of subdivision the current DA seeks to replicate, provide 2 non-compliant lots of approximately 597m² (compared to Proposed Lot 1 – 601.2m²) and 712m² (compared to Proposed Lot 2 – 720m²).*
- *The allotment to the south is large but I consider this to be atypical and not in keeping of the surrounding allotments. It is likely that this allotment will be subdivided in the foreseeable future.*
- *As outlined in this Clause 4.6 Variation, the proposed non-compliant lot (Proposed Lot 1) is in keeping with a number of non-compliant lots within the immediate locality. Furthermore, the existing residential dwelling located on Proposed Lot 1 will maintain the existing front and side boundaries and is compliant with Council’s Rear Setback Control, Site Coverage Control, Pervious Area Control and Deep Soil Landscaped Area Control. Accordingly, Proposed Lot 1 is of sufficient size to support the existing development.*
- *Proposed Lot 2 will comply with the Minimum Subdivision Lot Size Standard of 720m². Furthermore, the Proposed Lot 2 will have a street frontage to Whitton Street allowing for direct vehicle access.*
- *I also consider that the proposed development, notwithstanding the breach of the Minimum Subdivision Lot Size Standard, has strong environmental planning grounds in support of variation and will result in a range of positive outcomes.*
- *If Council was to require strict adherence to the Minimum Subdivision Lot Standard, then any subdivision of the subject site would not be allowed and the existing lot of 1321m² must be retained.*
- *A lot of 1321m² would clearly be incompatible when compared to the 2 immediate adjoining properties to the north and the areas of existing lots in the immediate locality.*

Put simply, the proposed subdivision creating lots of 601m² and 720m² would be more in keeping with the character of the area than retaining the existing lot of 1321m².

The accompanying Clause 4.6 Variation request also included the following

Part 4 Principal development standards	
	<p>justification in terms of there being sufficient environmental planning grounds to justify contravention of the standard.</p> <ul style="list-style-type: none"> • <i>If Council was to require strict adherence to the Minimum Subdivision Lot Standard, then any subdivision of the subject site would not be allowed and the existing lot of 1321m² must be retained. A lot of 1321m² would clearly be incompatible when compared to the 2 immediate adjoining properties to the north and the areas of existing lots in the immediate locality. Put simply, the proposed subdivision creating lots of 601m² and 720m² would be more in keeping with the character of the area than retaining the existing lot of 1321m².</i> • <i>To require strict compliance with the Minimum Subdivision Lot Size Standard is unreasonable and unnecessary as it is evident that the Proposed Lot 1 is sized to support the existing residential dwelling as identified under the Planning Controls within LEP 2015 and DCP 2015.</i> • <i>As outlined in this Clause 4.6 Variation, the proposed non-compliant lot (Proposed Lot 1) is in keeping with a number of non-compliant lots within the immediate locality. Furthermore, the existing residential dwelling located on Proposed Lot 1 will maintain the existing front and side boundaries and is compliant with Council’s Rear Setback Control, Site Coverage Control, Pervious Area Control and Deep Soil Landscaped Area Control.</i> • <i>Proposed Lot 2 will comply with the Minimum Subdivision Lot Size Standard of 720m². Furthermore, the Proposed Lot 2 will have a street frontage to Whitton Street allowing for direct vehicle access.</i> • <i>A 720 Sqm Allotment size requirement is unnecessary on this occasion because the 601sqm allotment on the Jubilee St frontage easily complies with:</i> <p style="margin-left: 40px;"><i>The Blue Mountains City Council DCP 2015 Part F5.1 Clause C5(a) “Building Envelope” requirements and</i></p> <p style="margin-left: 40px;"><i>The Blue Mountains City Council DCP 2015 Part F5.1 Clause C6 “Private Open Space requirements.</i></p>
<p>Discussion</p>	<p>The accompanying CI 4.6 Variation request has provided for great emphasis in the deficiency in lot sizes surrounding the subject site. This is an accepted position as highlighted in the following map:</p>

Part 4 Principal development standards



Noting the above, it is acknowledged that for this area of North Katoomba a large portion of lots are provided with a size which is below the minimum lot size requirement for an R2 Low Density Residential zoning. The proposed subdivision will also provide for the boundary allotment to align with the rear common boundary of the adjoining lots to the north being No. 23 Jubilee Street and 62 Whitton Street. In this regard, the size of the lots and their dimensions are not considered to be uncharacteristic of lot sizes surrounding the subject site noting also that the adjoining northern lots are similar in size and shape minimising any potential streetscape impact to either Jubilee or Whitton Street.

In addition to the above, the size of each lot proposed is considered to be capable of maintaining an acceptable building envelope and private open space area in accordance with the requirements of DCP 2015. It is also acknowledged that the provision of a large lot maintaining its existing size and dimensions is inconsistent with the majority of lots surrounding the subject site.

Part 4 Principal development standards	
Public benefit	It is considered that the variation of the development standard controlling minimum lot size is justified in the circumstances of the case by reason that strict adherence to the standard will not result in an improved outcome.
Supported	Yes

Part 6 Additional local provisions			
Clause	Standard	Discussion	Compliance Y/N
Impact on natural environment			
6.1	Impact on environmentally sensitive land	<p>Council's mapping indicates that a small portion of the site's southern side boundary, towards Whitton Street, is affected by <i>Protected Area – Slope Constraint</i>, which is defined as environmentally sensitive land. It is considered that the subdivision and any subsequent dwelling design and positioning may be designed and managed to minimise the impact on this land.</p> <p>Refer to <i>Clause 6.4</i> section below for further discussion.</p>	Yes
6.4	Protected Area – slope constraint	<p>Council's records indicates that this protected area is located along an 8m length of the southern boundary of the site and has an area of 19.4m² or 1.5% of the overall site area.</p> <p>The accompanying Statement of Environmental Effects has provided for a building envelope (12m x 25m) for proposed lot 2 which could be located clear of this protected area.</p>	Yes
6.9	Stormwater management	<p>The application was accompanied by engineering plans which has identified the provision of an inter-allotment drainage design and the creation of a 1m wide drainage easement to lot 2 along its northern side boundary. While the accompanying plans do not show the existing dwelling being connected to the inter-allotment drainage pit, this is satisfactory for subdivision given that there is an absorption trench servicing the small roof area of the dwelling which is in keeping with the infiltration objectives of Council's LEP and DCP. It is also considered that a future dwelling or extension of proposed lot 1 could be readily connected if required.</p> <p>The proposal was reviewed by Council's Development Engineer who raised no objection to</p>	Yes

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Part 6 Additional local provisions			
Clause	Standard	Discussion	Compliance Y/N
		this design feature with any forthcoming consent granted to be appropriately conditioned.	
Impact on built environment			
6.23	Essential Services	<p>All essential services are located close to proposed Lot 2 and can be made available for a future dwelling on the site.</p> <p>A condition is included that requires compliance certificates to confirm that water, sewer, electricity and telecommunications infrastructure will be made available to the site.</p> <p>There is a suitable frontage along Whitton Street to enable vehicular access to proposed Lot 2. There is an existing formed vehicular access to proposed Lot 1 on Jubilee Street. The access for Lot 2 is not required to be shown on the subdivision plan, as it is considered there are a number of locations that would be suitable and the exact location of a future dwelling house is unknown at this stage.</p>	Yes

Development Control Plan 2015 – s4.15(1)(a)(iii)

The proposed development has been assessed against the provisions of the Development Control Plan 2015 with significant points of consideration not assessed above, identified and discussed in the table below.

Part B Context, site analysis and design			
Clause	Standard	Discussion	Compliance Y/N
B1	Site and context analysis	<p>A survey of the site was supplied with the application showing all existing natural and built features on the site as well as buildings on surrounding land.</p> <p>The site analysis is considered to comply with DCP requirements.</p>	Yes
B2	Building envelope	<p><u>Setbacks: B2.3</u></p> <p>The common subdivision boundary between proposed Lot 1 and proposed Lot 2 is set back 15.5m behind the existing dwelling on proposed Lot 1, compliant with minimum rear setback requirements in the R2 zone under the DCP.</p>	Yes

Part B Context, site analysis and design			
Clause	Standard	Discussion	Compliance Y/N
		<p>A minimum building envelope of 300m² has been indicated on proposed lot 2 with dimensions of 12m x 25m.</p> <p>The building envelope is set back 0.9m from the northern (side) boundary, 3.5m from the southern (side) boundary, 11.7m from the western (rear) boundary and 7m from the eastern (front) boundary. This envelope may be modified so as to allow for any future building to be positioned a minimum 1m from the northern side boundary and not within the proposed easement area.</p> <p>A future dwelling within this building envelope would be able to comply with the minimum rear and side boundary requirements and would be able to be located within 20% of the front setback of the dwellings immediately to the north (62 Whitton Street). The existing lot to the south is currently vacant.</p> <p><u>Site Coverage and Pervious Area: B2.4</u></p> <p>The existing dwelling on proposed lot 1 complies with the 40% maximum site cover provision. A future dwelling and ancillary buildings to proposed lot 2 has sufficient area to also remain under the 40% maximum site cover provision.</p> <p>Both proposed lots have sufficient area to comply with the minimum pervious/landscaped area of 40%.</p>	

Part E Site development and management			
Clause	Standard	Discussion	Compliance Y/N
E2	Traffic, parking and access	<p>There is an existing parking space within proposed Lot 1.</p> <p>There is sufficient room on proposed Lot 2 to enable a car parking space to be included with any dwelling proposed on that lot.</p>	Yes

Part F Specific development types

Clause	Standard	Discussion	Compliance Y/N
Subdivision and consolidation			
F5.1	Subdivision	<p><u>Objectives</u></p> <p>The development complies with the DCP objectives for subdivision in the following ways:</p> <ul style="list-style-type: none"> • The proposed subdivision complements the predominant subdivision pattern of the area as witnessed by the lot sizes and layout directly adjoining to the north of the subject site and in the surrounding area. • The size of the proposed lots and the separate street frontages to each of those lots would support future new or replacement dwellings on both lots. • The site is in a quiet street with high traffic visibility enabling ease of access and pedestrian safety. <p><u>Controls</u></p> <p><u>C1 Subdivision design</u></p> <p>The application was accompanied by an arboricultural assessment which recommended the removal of a mature liquid amber tree species to the north eastern corner of the subject site (on proposed lot 2). This was recommended as the tree had co-dominant stems at a height of 1.2m onwards creating a structural fault. This tree was also identified as impeding the proposed drainage easement. The supporting document was reviewed by Council's Environmental Landscape Officer who supported the removal of this tree for the reasons stated above.</p> <p><u>C2 Subdivision on bushfire prone land</u></p> <p>A small portion of the north eastern corner of the subject site is identified as bushfire prone land. The application was accompanied by a Bushfire Report which identified that the whole of the site would be managed as an inner protection area (IPA) in accordance with the requirements of <i>Planning for Bush Fire Protection 2006</i>.</p> <p>This report also provides discussion regarding the adjoining vacant lot to the south (58 Whitton Street) being maintained as an IPA to maintain appropriate separation distances. The report was accompanied</p>	Yes

Part F Specific development types			
Clause	Standard	Discussion	Compliance Y/N
		<p>by a Plan of Management (PoM) for 58 Whitton Street which has been signed by the owner. However Council records indicate that the site is in joint ownership (Mr and Mrs). Council was subsequently provided with correspondence advising that, unfortunately, the joint owner had passed away in February 2019 and as such the property was in sole ownership.</p> <p>Noting the above, it is considered that owners consent for the PoM for 58 Whitton Street had been satisfactorily confirmed to ensure the adjoining property can be maintained as an IPA.</p> <p>Commentary returned from the RFS flagged the requirement of a legal agreement between owners to maintain the PoM. It has been required as a condition of consent that the property is maintained which is considered acceptable in this instance. It is possible that the adjoining southern property is developed in the future which would superseded the need for this legal agreement and the provision of a POM. The requirements of the PoM and legal agreement have been included in the conditions of consent.</p> <p><u>C3 Lot shape and orientation</u></p> <p>Both proposed new allotments will be regular in shape and enable dwellings to be located so that they have adequate street frontage and adequate solar access to private open space and living areas.</p> <p>Proposed Lot 2 would have sufficient area behind a new dwelling for the location of adequate private open space.</p> <p>Should the existing dwelling on proposed Lot 1 be retained, it would rely on the eastern (rear) portion of the site for private open space. This area is of sufficient size and with sufficient solar access to satisfy private open space requirements as addressed below under Control 6.</p> <p>Both lots have adequate areas for parking and stormwater measures proposed with a 1m wide easement along the northern boundary of proposed lot 2</p> <p><u>C4 Access from a public road</u></p>	

Part F Specific development types			
Clause	Standard	Discussion	Compliance Y/N
		<p>Both lots have suitable vehicular access directly available from separate public roads. Proposed Lot 1 is already accessed from Jubilee Street, while proposed Lot 2 can be readily accessed from Whitton Street.</p> <p><u>C5 Building envelope</u></p> <p>The application has been accompanied by a statement of environmental effects which has identified a 12m x 25m building envelope on proposed lot 2. The position of this building envelope has identified that any future dwelling may be positioned outside of the <i>protected area - slope constraint</i> located along the southern (side) boundary.</p> <p>There is sufficient area to locate a dwelling on proposed lot 2 clear of the proposed drainage easement and identified protected area.</p> <p>The proposed lots are not identified as be Flood Prone and have ready access from a public road.</p> <p><u>C6 Private Open Space</u></p> <p>A 196m² private open space area has been calculated behind the building envelope on proposed Lot 2. This area is calculated to be greater than 10m wide and deep. The private open space area can be easily accessed from the living space of a new dwelling, is not on land with more than a 10% slope. The private open space will have sufficient solar access noting its northern and western exposure.</p> <p>The existing dwelling on proposed Lot 1 has an adequate area of private open space of 265m² to the rear of the existing dwelling also with a width and a depth greater than 10m. Sufficient solar access is also available to this space noting its northern and eastern exposure.</p> <p><u>C7 Lot widths</u></p> <p>Each proposed lot will have a width of 16.46m which does not comply with the minimum 18.5m lot width in the R2 zone. The application has been accompanied by a statement of environmental effects which is considered to have identified</p>	

Part F Specific development types			
Clause	Standard	Discussion	Compliance Y/N
		<p>appropriate justification for a variation of this provision. There are a large number of existing lots surrounding the subject site that also do not comply with this minimum lot width requirement.</p> <p>The existing dwelling on the site is an older style dwelling with a separation of 7m provided to one side boundary. In this regard, the provision of a frontage less than 18.5m in width is not considered a significant deviation from the existing streetscape setting surrounding the subject site. The proposed variation is considered supportable in this instance.</p> <p><u>C9 Lot width depth ratio</u></p> <p>Each lot complies with the required lot width/depth ratios of between 1:1 and 1:4.</p> <p>The depth of proposed Lot 1 is 36.53m and width 16.46m making a 1:2.22 ratio. The depth of proposed Lot 2 is 43.74m and width 16.46m making a 1:2.66 ratio.</p> <p><u>C11 Drainage to public infrastructure</u></p> <p>Both lots drain by a drainage easement over proposed lot 2 and would be able to drain to public stormwater infrastructure in Whitton Street.</p> <p><u>C12 Drainage easement</u></p> <p>A 1m drainage easement burdening proposed lot 2 is shown on the subdivision plan and stormwater plan. This proposed easement was reviewed by Council's Development Engineer with no objection raised. This requirement has been included in the conditions of consent</p>	

Planning Agreement – s4.15(1)(a)(iiia)

There are no planning agreements that apply to the proposed development or the subject site.

Regulations – s4.15(1)(a)(iv)

The *Environmental Planning and Assessment Regulation*, provides controls and regulations that relate to the management of the proposed development. These requirements are inherent in the assessment processes undertaken for the proposal.

Likely impacts – s4.15(1)(b)

Likely impacts on the natural and built environment

It is considered that the development will not have an adverse impact on the natural or built environment. While the subdivision will provide for proposed lot 1 to be created with a non-compliant site area, it is considered that the lot size proposed is consistent with its surroundings and is not out of character with the immediate streetscape. The proposal is considered to have appropriately demonstrated that stormwater management may be provided for while building envelopes demonstrate that an acceptable area for both a future built form as well as private open space areas can be provided to each lot.

Supporting documentation has identified that only one (1) non-native tree will require removal to facilitate the proposed stormwater easement with this limited tree removal also assisting in mitigating visual concerns of the subject site.

Likely social impacts

Discussion

It is considered that the development does not have adverse social impacts.

Likely economic impacts

Discussion

It is considered that the development does not have an adverse economic impact.

Suitability of the site for the development – s4.15(1)(c)

Site suitability

The site is considered suitable for the proposed development for the following reasons:

- The site is within an existing developed area of Katoomba with all services capable of being made available to the site.
- The site is close to services and facilities in the village of Katoomba
- The site has no environmental or heritage constraints, and
- The site provides for suitably located and sized lots that are compatible with the subdivision pattern in the street.

Submissions – s4.15(1)(d)

Notification and / or exhibition

Consultation was undertaken in accordance with the requirements of Part H (Public Participation) of Blue Mountains Development Control Plan 2015 and the requirements under the Environmental Planning and Assessment Regulations.

Notification

The application was advertised in the Blue Mountains Gazette for 14 days from the 9 September until the 23 September, 2020. Written notification was also sent to adjoining and nearby properties.

Submissions – s4.15(1)(d)	
Notification and / or exhibition	
	No submissions were received during this period.

Public interest – s4.15(1)(e)	
Public interest	<p>No issues have arisen during the assessment that would indicate the proposed development is not in the public interest</p> <p>The proposal will provide for a similar subdivision pattern to that surrounding the subject site with all necessary services available to cater for the new lot layout.</p>

PART 3 Proposed conditions of consent

Confirmation of relevant plans and documentation

1. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the following plans and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent:

Document	Prepared by:	Drawing No	Issue	Date
Subdivision Plan	Ramco Pty Ltd	A101	A	29 June, 2020
Stormwater Site Layout	Wehbe Consulting	SW843-2	B	8 July, 2020

Construction certificate

2. A construction certificate is required prior to the commencement of the inter-allotment drainage works.

Subdivision works certificate

3. A subdivision works certificate is required prior to the commencement of any site works including provision of services.

The details submitted with the subdivision works certificate application are to include an erosion and sediment control plan in accordance with the principles outlined in the 'Managing Urban Stormwater Soils and Construction' (Volume 1), dated March 2004 by Landcom NSW.

Internal engineering design

4. Prior to the issue of the Subdivision Works Certificate, detailed engineering plans for the interallotment drainage system, prepared and endorsed by a suitably qualified person, shall be submitted to and approved by the Principal Certifier.

The plans are to be based on the approved plans by Wehbe Consulting.

Approval under the Roads Act 1993

5. Before work commences in Council's roads (service and stormwater connections), plans and specifications are to be submitted to and approved by the Council under the Roads Act 1993.

All works in Council's road are to be at no cost to Council.

Plan of Management - 58 Whitton Street, Katoomba

6. Prior to the issue of a subdivision certificate and as required by condition 2 of the NSW Rural Fire Service General Terms of approval DA20200908003263-Original 1, dated 8 February, 2021, a suitably worded instrument is to be created in accordance with Section 88 of the Conveyancing Act 1919 to require the adjoining vacant lot (Lot 9, Section 3, DP 758553 - No. 58 Whitton Street, Katoomba) to be maintained as an Inner Protection Area in accordance with the Plan of Management signed 16 November, 2020 and in accordance with Appendix 4 of Planning for Bushfire Protection 2019. The management of this lot is to be conducted in perpetuity or until such time that development of this lot

makes the Plan of Management redundant.

Drainage easement

7. Prior to the issue of a subdivision certificate and to ensure legal drainage rights are provided to proposed Lot 1 over proposed Lot 2, a suitably worded instruments is to be created in accordance with Section 88 of the Conveyancing Act 1919 for a drainage easement, 1.0 metre wide, is to be registered for the constructed drainage infrastructure.

The Section 88B Instrument shall contain a provision that it may not be extinguished or altered except by Blue Mountains City Council.

Approved tree removal

8. Due to an assessed high failure potential, removal of the tree identified on submitted arboricultural report as Tree No.4, a mature *Liquidamber styraciflua* with co-dominant stems, is granted.

All other trees required to be retained on or adjacent to the site must not be damaged by approved tree removal or other approved activities associated with the subdivision works.

Signage

9. To ensure that the site is easily identifiable for deliveries and provides information on the person responsible for the site, a sign displaying the following information is to be erected in a prominent position on the site prior to building, subdivision or demolition works commencing:
- The name, address and telephone number of the principal certifying authority for the work.
 - The name of the principal contractor for any building work and a telephone number on which that person may be contracted outside working hours, and
 - The statement that "Unauthorised entry to the site is prohibited".

Site management

10. To safeguard the local amenity and pedestrian safety, reduce noise nuisance and to prevent environmental pollution during the construction period:
- Site and building works (including the delivery of materials to and from the property) shall be carried out Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm, excluding public holidays. Alteration to these hours may be possible for safety reasons but only on the agreement of Council.
 - Stockpiles of topsoil, sand, aggregate, spoil or other building materials, and temporary structures (such as site sheds and toilets) shall be stored wholly within the subject property and clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site. The approval of Council under the Roads Act 1993 is to be obtained prior to the placement of any materials or temporary structures on Council land.
 - Building operations such as brickcutting, washing tools, concreting and bricklaying shall be undertaken on the building block, with pollutants contained on site.
 - Builders waste generated under this consent (including felled trees, tree

	<p>stumps and other vegetation) must not be burnt or buried on site.</p> <ul style="list-style-type: none"> • All waste must be contained and removed to an approved Waste Disposal Depot or in the case of vegetation, with the exception of environmental and declared noxious weeds, mulched for re-use on site.
Workers amenities	11. Before work starts, toilet facilities must be provided for construction personnel on the site. Amenities are to be installed and operated in an environmentally responsible and sanitary manner.
Erosion & sediment controls	<p>12. To preserve the unique environment of the Blue Mountains and to contain soil and sediment on the property, controls in accordance with the Development Control Plan are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:</p> <ul style="list-style-type: none"> • The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment. • To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres. <p>Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turf, paving or revegetation.</p>
Completion of inter-allotment drainage works easement	13. Prior to release of the Subdivision Certificate, the Principal Certifier is to be satisfied that the inter-allotment drainage system has been installed in accordance with the approved plans, and the line of the pipe suitably revegetated.
Repair of damage	14. The applicant shall repair or reconstruct all damages caused by subdivision works activity relating to the development as required by the Council's Supervising Engineer prior to release of the Subdivision Certificate
Certification by Council	15. Prior to the issue of the Subdivision Certificate, a certificate shall be obtained from Council to verify that all works within the road reserve have been completed in accordance with the approved plans and to Council's satisfaction.
Certificates from Authorities	16. To ensure satisfactory effluent disposal and utility services are provided to all lots on the subdivision, you are required to submit to Council compliance certificates from:
Early contact with these authorities is recommended	<ul style="list-style-type: none"> a. Sydney Water

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- A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation confirming reticulated water and gravity sewer systems are available to each lot.
 - Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.
 - Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, as it can take some time to build water/sewer pipes and this may impact on other services and building, driveway or landscape design.
 - The Section 73 Certificate must be submitted to the Principal Certifier prior to issue of a Subdivision Certificate.

b. Endeavour Energy indicating that satisfactory arrangements have been made for the provision of electricity supply to each lot in the subdivision.

c. An approved telecommunications service provider stating that satisfactory arrangements have been made for telecommunications services to each lot in the subdivision.

Relocation of private services

17. To ensure the proposed lots are appropriately serviced, all private services that encroach upon other lots are to be relocated such that no encroachment occurs or be secured within an appropriate easement to the satisfaction of the service authority where required, and the Principal Certifier.

Certification is to be provided that no encroachments occur prior to the release of the subdivision certificate.

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**Condition 1- Asset
Protection Zones**

18. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bushfires, the entire of the proposed residential lots must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply:
- tree canopy cover should be less than 15% at maturity;
 - trees at maturity should not touch or overhang the building;
 - lower limbs should be removed up to a height of 2m above the ground;
 - tree canopies should be separated by 2 to 5m;
 - preference should be given to smooth barked and evergreen trees;
 - large discontinuities or gaps in vegetation should be provided to slow

down or break the progress of fire towards buildings;

- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass to be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris are removed.

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**Condition 2- Asset
Protection Zones**

19. At the issue of a subdivision certificate, a suitably worded document must be created over the land immediately to the south of the subject site, located at 58 Whitton Street, Katoomba, Lot 9 Section 3 in DP758553 pursuant to Section 88 of the *Conveyancing Act 1919*, to ensure its ongoing management as an Inner Protection Area (IPA) in accordance with Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply;

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass to be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris are removed.

The instrument may be lifted upon commencement of any future proposed development on the adjoining land, but only if the bush fire hazard is removed as part of the proposal. The name of authority empowered to release, vary or modify the instrument shall be the Blue Mountains City Council.

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20. The existing dwelling being retained must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of

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Condition 3- Construction Standards

2mm. When applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

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Conditions 4 - Water and Utility Services

21. The provision of water, electricity and gas must comply the following in accordance with Table 5.3c of *Planning for Bush Fire Protection 2019*:
- reticulated water is to be provided to the development where available;
 - fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
 - hydrants are not located within and road carriageway;
 - reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
 - fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1: 2005;
 - all above-ground water service pipes are metal, including and up to any taps;
 - where practicable, electrical transmission lines are underground;
 - where overhead, electrical transmission lines are proposed as follows:
 - a) lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
 - b) no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
 - reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
 - reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 – The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used.
 - all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
 - connections to and from gas cylinders are metal; polymer sheathed flexible gas supply lines are not used; and
 - above-ground gas service pipes are metal, including and up to any outlets.
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22. Landscaping of the proposed lot within the existing dwelling, must comply with the principles of Appendix 4 of *Planning for Bush Fire Protection 2019*;

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**Condition 5- Landscape
Assessment**

- Suitable impervious areas are provided immediately surrounding the building such as courtyards, paths and driveways.
- Grassed areas, mowed lawns or ground cover plantings are provided in close proximity to the building
- Planting is limited in the immediate vicinity of the building.
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters).
- Landscape species are chosen in consideration needs of the estimated size of the plant at maturity.
- Species are avoided that have rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies.
- Smooth bark species of tree are chosen which generally do not carry a fire up the bark into the crown.
- Planting of deciduous species is avoided which may increase fuel at surface/ ground level (i.e. leaf litter).
- Climbing species are avoided to walls and pergolas.
- Combustible materials such as woodchips/mulch and flammable fuel are stored away from the building.
- Combustible structures such as garden sheds, pergolas and materials such timber garden furniture are located away from the building; and
- Low flammability vegetation species are used.

Subdivision Certificate

23. An application for a subdivision certificate is required on completion of all conditions of Development Consent. The application should include the original plan of subdivision plus five (5) copies. The location of all buildings and/or other permanent improvements must be shown on one (1) copy.