

<b>ITEM 10.4</b>	<b>PLANNING PROPOSAL RALSTON AVENUE AND DRAFT VOLUNTARY PLANNING AGREEMENT</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE MANAGER STRATEGIC &amp; PLACE PLANNING</b>
<b>TRIM FILE REF</b>	<b>2017/492398</b>
<b>ATTACHMENTS</b>	<b>1 Ralston Avenue Planning Proposal and Voluntary Planning Agreement - Assessment and Attachment Booklet (Included In Attachments Booklet)</b>

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### EXECUTIVE SUMMARY

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#### PURPOSE

To inform Council of the outcome of the consultation process for a Planning Proposal to rezone Lot 1 in DP 1139826, Ralston Avenue, Belrose, and to seek support to reject the Planning Proposal and the accompanying draft Voluntary Planning Agreement.

#### SUMMARY

In April 2013, the Metropolitan Local Aboriginal Land Council (MLALC) lodged a Planning Proposal application to rezone a 135 hectare site at Ralston Avenue, Belrose for low density residential housing (171 lots), public open space and environmental management.

The original Planning Proposal was rejected by Council in December 2013. However, the Department of Planning and Environment (the Department) issued a Gateway Determination 28 January 2015, following an application by MLALC to the Department for a “pre-gateway review” of Council’s decision.

In 2015, Council undertook extensive consultation with the Proponent and State government authorities in accordance with the Gateway Determination (Rural Fire Service, Office of Environment and Heritage, Roads & Maritime Services and Transport for NSW). The Proponent responded to the above consultation and provided further studies and an updated Planning Proposal dated December 2015.

In 2016, Council sought updated public authority advice in response to the December 2015 Planning Proposal. Council also commissioned a Bushfire Consultant to undertake an independent Peer Review of the Bushfire Planning documentation to facilitate Council’s assessment. The Peer Review highlighted significant bushfire concerns which Council brought to the attention of the RFS.

The Proponent lodged an Updated Planning Proposal on 28 April 2017, responding to the above consultation, and in particular to bushfire and biodiversity concerns raised by the Rural Fire Service (RFS) and Office of Environment and Heritage (OEH).

A draft Voluntary Planning Agreement (VPA) accompanied the Updated Planning Proposal inclusive of public benefits such as community and recreational facilities, Aboriginal Community services, traffic and transport infrastructure, bushfire management arrangements and stormwater infrastructure.

Council publicly exhibited the Updated Planning Proposal and draft VPA from Saturday 27 May to Sunday 25 June 2017 and sought an updated response from public authorities and utility providers.

A total of 243 submissions were received from the community, with most objecting to the proposal (84%) mainly due to environment and traffic impacts and bushfire risks. Some respondents expressed support for the proposal (2%) while others expressed support subject to conditions (4%). The remaining responses (10%) either did not say or were not related to the Planning Proposal.

The Updated Planning Proposal is not supported by RFS, OEH, National Parks and Wildlife Service (NPWS) and TransGrid (who own and operate the adjoining Sydney East Substation). No specific objections were raised by Transport for NSW (TfNSW), Roads and Maritime Services (RMS), Sydney Water or Ausgrid. However, the proposal is unlikely to comply with Ausgrid's conditions relating to bushfire evacuation.

The Planning Proposal provides some recreational facilities, formalises recreational access to private land, and facilitates the economic use of Aboriginal land acquired under the *Aboriginal Lands Rights Act 1983*.

However, Council's assessment found that on balance, the Planning Proposal did not have strategic merit as it is inconsistent with aims to protect the environment and increase resilience to natural hazards as identified in A Plan for Growing Sydney, and the Greater Sydney Commission's Revised draft North District Plan and Draft Greater Sydney Region Plan (October 2017). The provision of additional housing was not considered to have merit as the proposal was not identified through a strategic process and the site is not feasible for residential development.

The Proposal was found to be inconsistent with State Environmental Planning Policies (SEPPs) No 19—Bushland in Urban Areas and SEPP (Infrastructure) 2007, relevant Ministerial Directions and local provisions, policies and plans. The site has not been identified as having future development potential in either Stage 1 or 2 of the Oxford Falls Belrose North Strategic Review.

Council's assessment also concluded the Proposal had no site-specific merit due to impacts on biodiversity and threatened species, the adjoining National Park, bushfire risk, the proximity of the Sydney East Substation and financial arrangements for infrastructure provision. There remain unresolved issues with respect to stormwater and social infrastructure.

Council does not support the VPA as it does not deliver demonstrable public benefits. The proposed public benefits were found to mainly benefit the occupants of the proposed future development rather than the broader community and/or could be required as conditions of a future development consent. Whilst some public benefits were laudable (e.g. Aboriginal community services and recreational facilities), these could be provided outside the VPA process.

In conclusion, Council does not support the Updated Planning Proposal and draft VPA following consideration of updated studies, agency input and consultation. If the proposal were to proceed, it would result in unacceptable risks to life, property and the environment which would outweigh any potential benefits of the proposed development.

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## RECOMMENDATION OF GENERAL MANAGER PLANNING PLACE & COMMUNITY

That Council:

- A. Reject the Planning Proposal lodged for Lot 1 in DP 1139826, Ralston Avenue Belrose, and recommend the Department of Planning and Environment do not make a Local Environment Plan to enable the development for the following reasons:
- a. It has no strategic merit due to inconsistencies with directions, aims and priorities to protect the environment and increase resilience to natural hazards in A Plan for Growing Sydney and the Greater Sydney Commission's Revised draft North District Plan and Draft Greater Sydney Region Plan (October 2017).
  - b. It has no site-specific merit due to impacts on biodiversity and threatened species, the adjoining National Park, bushfire risk, the proximity of the Sydney East Substation and financial arrangements for infrastructure provision.
  - c. It is inconsistent with the specific aims of State Environmental Planning Policies (SEPP) No 19—Bushland in Urban Areas and Council is not satisfied that the proposal will result in significant environmental, economic or social benefits that outweigh the value of the bushland.
  - d. It is inconsistent with SEPP (Infrastructure) 2007 as it has not addressed likely impacts on an electricity transmission network and associated concerns of an electricity supply authority (i.e. TransGrid) for development immediately adjacent to an electricity substation.
  - e. It is inconsistent with s117 Ministerial Direction: 2.1 Environmental Protection Zones, as it would change current planning standards which protect the environment by restricting residential development to 1 dwelling per 20 hectares.
  - f. It is inconsistent with s117 Ministerial Direction: 6.3 Site Specific Provisions, as site specific provisions may be required to prohibit certain uses from the proposed R2 Low Density Residential Zone and E3 Environmental Management Zones.
  - g. It is inconsistent with s117 Ministerial Direction: 7.1 Implementation of A Plan for Growing Sydney, by undermining the achievement of its planning principles; directions; and priorities. Especially those that encourage a risk-based approach to strategic planning through halting development in high risk areas.
  - h. The Rural Fire Service do not support the proposal and find it inconsistent with S117 Direction 4.4 Planning for Bushfire Protection, as it would place inappropriate development in a hazardous area and would not achieve the primary objectives to protect life, property and the environment and encourage the sound management of bush fire prone areas.
  - i. The proposal fails to address issues associated with access to the site and evacuation from the site in the event of a bushfire, including the risk associated with arcing to ground from the 330kva power lines and disruption of planned evacuation routes.
  - j. It is inconsistent with local provisions, policies and plans which aim to protect the environment, including the Warringah Local Environmental Plan 2000 (WLEP 2000); Warringah Council Policy ENVPL 005 Bushland Policy; Warringah Council Policy Protection of Waterways and Riparian Lands and Warringah Council Policy Water Management Policy and the Draft Community Strategic Plan SHAPE 2028.

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- k. The site has not been identified as having future development potential in either Stage 1 or 2 of the Oxford Falls Belrose North Strategic Review (Strategic Review).
  - l. The Office of Environmental Heritage and National Parks and Wildlife Service do not support the proposal due to impacts on biodiversity and threatened species and the adjoining National Park.
  - m. It is unlikely to comply with Ausgrid's conditions of consent relating to bushfire evacuation.
  - n. It would result in unacceptable risks to life, property and the environment which would outweigh any potential benefits of the proposed development.
  - o. The majority of public submissions do not support the proposal.
- B. Reject the draft Voluntary Planning Agreement (VPA) that accompanies the above Planning Proposal, for the following reasons:
- a. The draft VPA does not deliver a demonstrable public benefit.
  - b. The Biodiversity Certification agreement cannot be included as a public benefit.
  - c. The community facility contribution is insufficient to support the additional increase in population.
  - d. There is insufficient detail on the proposed Aboriginal services and MLALC land management proposals that could be funded outside a VPA process.
  - e. Most of the proposed public benefits would benefit the future occupants rather than the wider community and could alternatively be required as conditions of future consent.
  - f. The proposed park is in an unsuitable location and would place an unreasonable maintenance burden to Council due to bushfire management requirements.
  - g. The National Parks and Wildlife Service (NPWS) does not support the proposed increased access to Garigal National Park as consultation has not occurred and the associated impacts have not been addressed.
  - h. Council has received many submissions from the community who do not do not consider the proposed public benefits adequately compensate for the loss of bushland.
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## REPORT

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### BACKGROUND

#### 1.1 Pre-Gateway Determination

In April 2013, the Metropolitan Local Aboriginal Land Council (MLALC – the Proponent) lodged an application to rezone a 135 hectare site at Ralston Avenue, Belrose for low density residential housing (171 lots with a minimum lot size of 550m<sup>2</sup>), public open space and environmental management (zoned E3 Environmental Management).

Council consulted with the Rural Fire Service (RFS) and Sydney Water, and facilitated a preliminary (non-statutory) community consultation, receiving 41 letters of objection and 3 letters in support.

In response to the above consultation and feedback from Council, in August 2013, the Proponent submitted updated environmental reports. The proposal was updated by replacing the proposed E3 Environmental Management zoning with E2 Environmental Conservation, amending the zone boundaries, changing the minimum lot size to 600m<sup>2</sup>, amalgamating the open space, amending the road layout and providing an 'in principle' agreement to enter into a Voluntary Planning Agreement (VPA).

On 13 November 2013, Council staff referred a report to the Warringah Development Assessment Panel (WDAP) recommending conditional support for the Planning Proposal subject to the preparation of further studies and concurrences, including the application of Biodiversity Certification, the preparation of a VPA. WDAP agreed with this recommendation.

Notwithstanding the above, Council's recommendation acknowledged that the site presented a number of complexities which required investigation including: impacts to flora and fauna; stormwater management; bush fire management and traffic. It acknowledged these outstanding matters could significantly affect the scale and configuration of the proposed residential area.

On 17 December 2013, the elected Council resolved not to support the Planning Proposal. The reasons for this were not included in the minutes of the meeting; however the recording of the debate shows Councillors citing concerns regarding an unacceptable risk of bushfire in the area, deficiencies in the bushfire assessment provided by the Proponent and loss of bushland.

#### 1.2. Gateway Determination

On 28 January 2014, the Proponent requested the Department of Planning and Environment (the Department) to reconsider the proposal and Council's decision by way of a pre-gateway review. The Department issued a Gateway Determination 28 January 2015, based on an assessment by the Department's staff and support from the Joint Regional Planning Panel – Sydney Region East (JRPP). The Gateway Determination included a number of conditions including a requirement to change the proposed E2 Environmental Zone to an E3 Environmental Management zone and a requirement to consult with agencies.

In 2015, Council undertook extensive consultation with the Proponent and State government authorities in accordance with the Gateway Determination (Rural Fire Service, Office of Environment and Heritage, Roads & Maritime Services and Transport for NSW). The Proponent responded to the above consultation and provided further studies and an updated Planning Proposal dated December 2015. This version proposed a number of changes including a reduction in the number of lots from 171 to 159 and the protection of a portion of land on the eastern part of the site for Duffys Forest EEC.

In early 2016, Council sought updated public authority advice in response to the December 2015 Planning Proposal. Council also commissioned a Bushfire Consultant to undertake an independent Peer Review of the Bushfire Planning documentation (Bushfire Peer Review) to facilitate Council's assessment. The Proponent submitted an updated Planning Proposal June 2016.

The Bushfire Peer Review highlighted significant bushfire concerns which Council brought to the attention of RFS. In response to the Bushfire Peer Review, the Proponent engaged another consultant (Peterson Bushfire) to peer review their bushfire planning documentation and provided a response to the RFS.

### **1.3. Public Exhibition**

On 28 April 2017, the Proponent lodged an Updated Planning Proposal (Updated Planning Proposal) and draft VPA for public exhibition, incorporating changes in response to public authority feedback and in particular to bushfire and biodiversity concerns raised by the Rural Fire Service (RFS) and Office of Environment and Heritage (OEH). The Updated Planning Proposal included changes to the indicative subdivision layout and proposed 156 residential allotments.

Council publicly exhibited the updated documents from 27 May to 25 June 2017 and sought an updated response from public authorities and utility providers.

Following the public exhibition period, further discussions were held between the Proponent and the Rural Fire Service regarding bushfire risks. These discussions were attended by Council and its Bushfire Consultant. In response to RFS concerns, the proponent commissioned a further Bushfire report prepared by Eco Logical Australia dated 16 August 2017, titled Ralston Avenue Belrose Planning Proposal: Review.

The last of the public authority responses was received by Council on 18 October 2017 from RFS, following their review of the additional Bushfire report.

### **1.4 Recent Events**

On 25 October 2017, the Proponent submitted a response to public submissions and public authority comments and additional information, including a revised Transport, Traffic and Assessment Report (September 2017), Noise Impact Assessment of TransGrid Substation (October 2017) and submission from Travers Bushfire and Ecology (October 2017). An additional Aboriginal Archaeological & Cultural Heritage Assessment was submitted 1 November 2017. The Proponent requested Council's detailed review of this information.

Following consultation with the Department, Council decided not to re-exhibit the additional information or seek updated responses from public authorities and utility providers as it did not make a significant material change to the intent of the planning proposal. The Aboriginal Archaeological & Cultural Heritage Assessment and revised Traffic Report were referred internally for comment.

By letter dated 1 November 2017, Council received Notice of Gateway Determination from the Department for Council's Planning Proposal to transfer the existing planning controls within the Oxford Falls Valley and Belrose North area under Warringah Local Environmental Plan 2000 into Warringah Local Environmental Plan 2011. This Planning Proposal includes the subject land, and proposes an E3 – Environmental Management zone for its entire area.

The following report provides a summary of Council's assessment of the Updated Planning Proposal and draft VPA with consideration of updated studies, agency input and consultation. It also addresses the additional information provided by the proponent following the public exhibition period. More detail on the assessment and supporting documentation is provided in the Attachments.

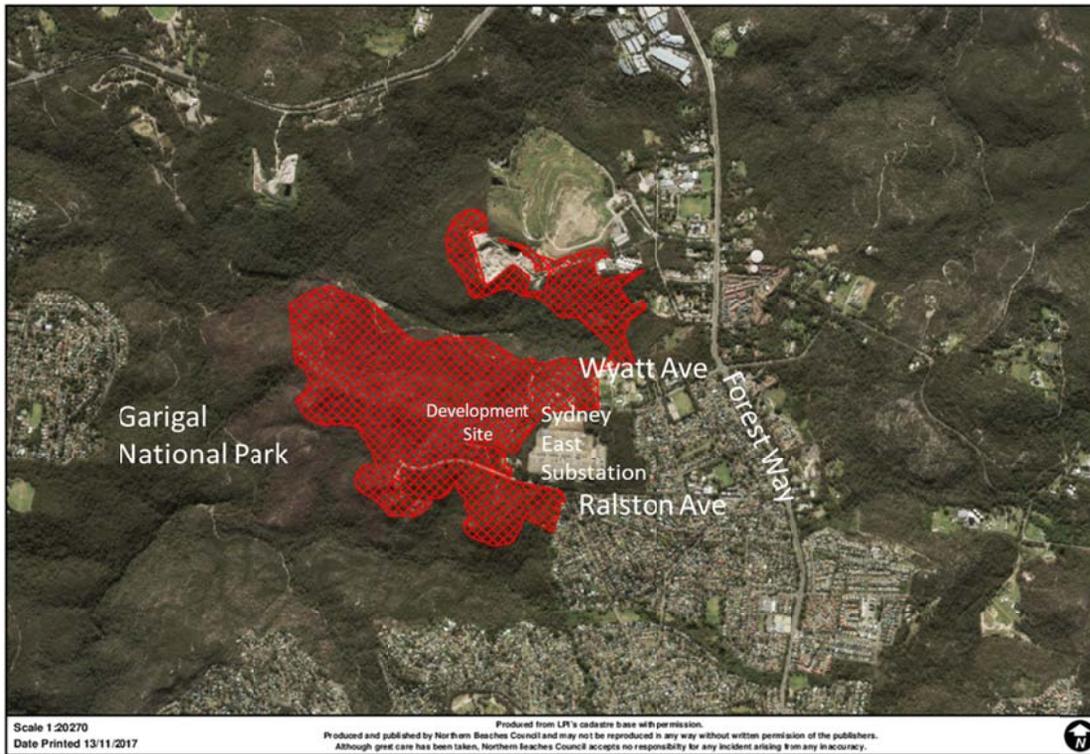


Figure 1 – MLALC Site

## 2. DESCRIPTION OF PROPOSAL

The Planning Proposal seeks to amend Warringah Local Environmental Plan 2011 (WLEP 2011) to enable the subdivision and redevelopment of 136.62 hectares of land owned by MLALC (**MLALC Site** – see Figure 2) at Ralston Avenue, Belrose, to:

- R2 Low Density Residential - 17.27 hectares (12.6% of the site) with a yield of 156 lots (see Figure 3), based upon a minimum lot size of 600 square metres and a maximum building height of 8.5 metres (referred to as the **Development Site**)
- RE1 Public Recreation - 0.3 hectares (0.2% of the site) for a public park (referred to as the **Public Park**)
- E3 Environmental Management - 119.05 hectares (87.2% of the site) to be retained as natural bushland with Asset Protection Zones and recreation trails adjacent to the future residential land (referred to as the **E3 Environmental Management Area**)

The objectives and intended outcomes are addressed in Attachment 1.

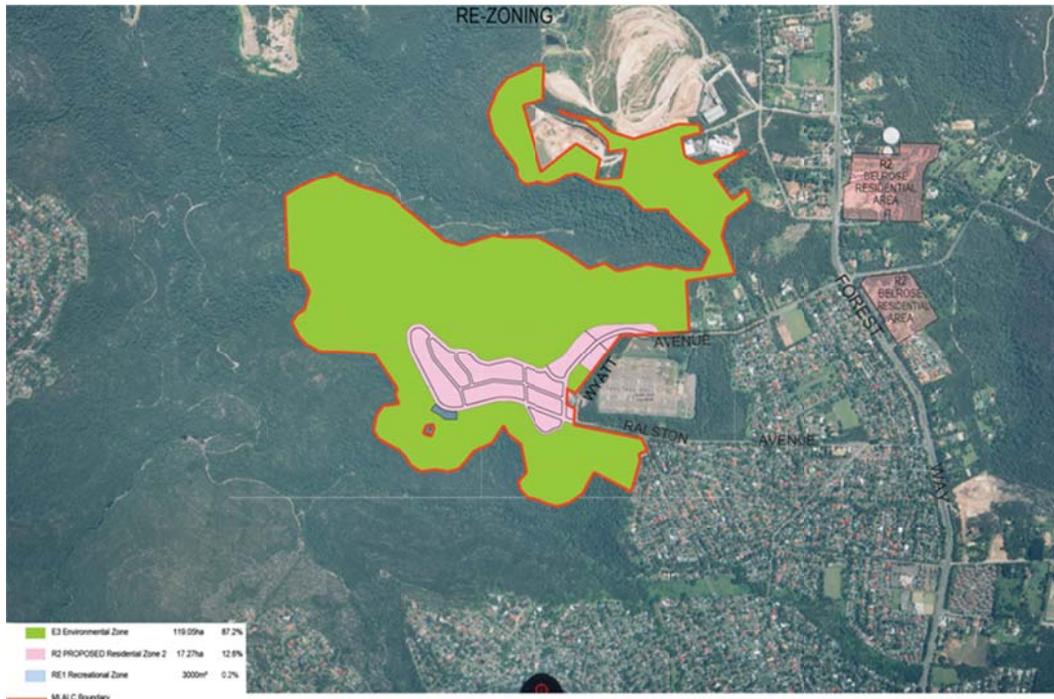


Figure 2 – Proposed Land Use Zoning – Total MLALC Site (source, Figure 2 of Supplementary Planning Report and Updated Planning Proposal – April 2013)



Figure 3 – Indicative Subdivision Plan – April 2013

### 3. DESCRIPTION OF SITE

The MLALC Site is an undeveloped, irregularly shaped parcel of land, known as Lot 1 DP 1139826, Belrose (see Figure 1). It is 136.16 hectares in size and adjoins Garigal National Park to the south, west and north. Most of the site is covered in native bushland, and is crossed in places by a pattern of informal vehicle, bike and horse tracks.

The Development Site (highlighted pink in Figure 2), is located west of existing residential housing in Ralston Avenue and the Sydney East Substation. It is located on a plateau at the crest of a ridge, with the southern boundary partially marked by an existing road extending from Ralston Avenue to an electrical substation facility.

The Development Site perimeters to the north, west and south comprise gentle to steep sloping sandstone escarpments.

### 4. CURRENT ZONING

The MLALC Site is located within the C8 Belrose North locality under Warringah Local Environmental Plan 2000 (WLEP 2000 – see Figures 4 & 5). The current dwelling entitlement for the land is 1 dwelling per 20ha, which equates to approximately 6 or 7 dwellings ( $136.16 / 20 = 6.8$ ).

The MLALC Site is part of the wider C8 Belrose North and B2 Oxford Falls Valley localities that were deferred from WLEP2011 and are subject to the Oxford Falls Belrose North Strategic Review (Strategic Review). This Strategic Review was initiated by the Minister for Planning in August 2011 in response to submissions received during the exhibition of draft WLEP 2011.

The Strategic Review is a two-stage process. Stage 1 is complete and recommended the site be zoned E3 Environmental Management when transferred from WLEP2000 to WLEP2011 (see Figure 6).

The Department of Planning and Environment have recently requested Council to progress Stage 2, including an investigation of future development potential of four sites for Urban Development (Oxford Falls West, Red Hill, Lizard Rock, and Cromer Golf Club) and the suitability of residential zones in the proposed E4 Environmental Living areas. This matter will be the subject of a report to Council in early 2018.

The Proposal is inconsistent with the Strategic Review in that the site has not been identified as having future development potential in Stage 1 of the Strategic Review. Although this initial stage did not intend to significantly change the urban development potential of land in Oxford Falls Valley and Belrose North, the MLALC site has not been earmarked for future investigations in the scope of works for the Stage 2.

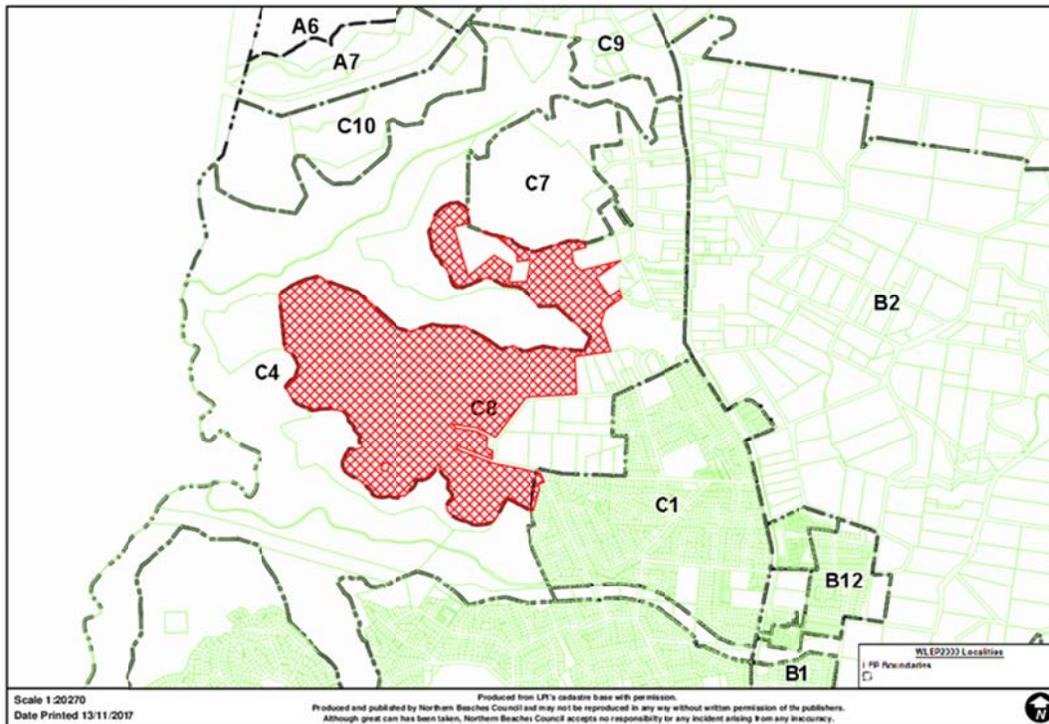


Figure 4 - WLEP2000 Zoning of Site (Locality C8 and B2 Deferred from WLEP2011)

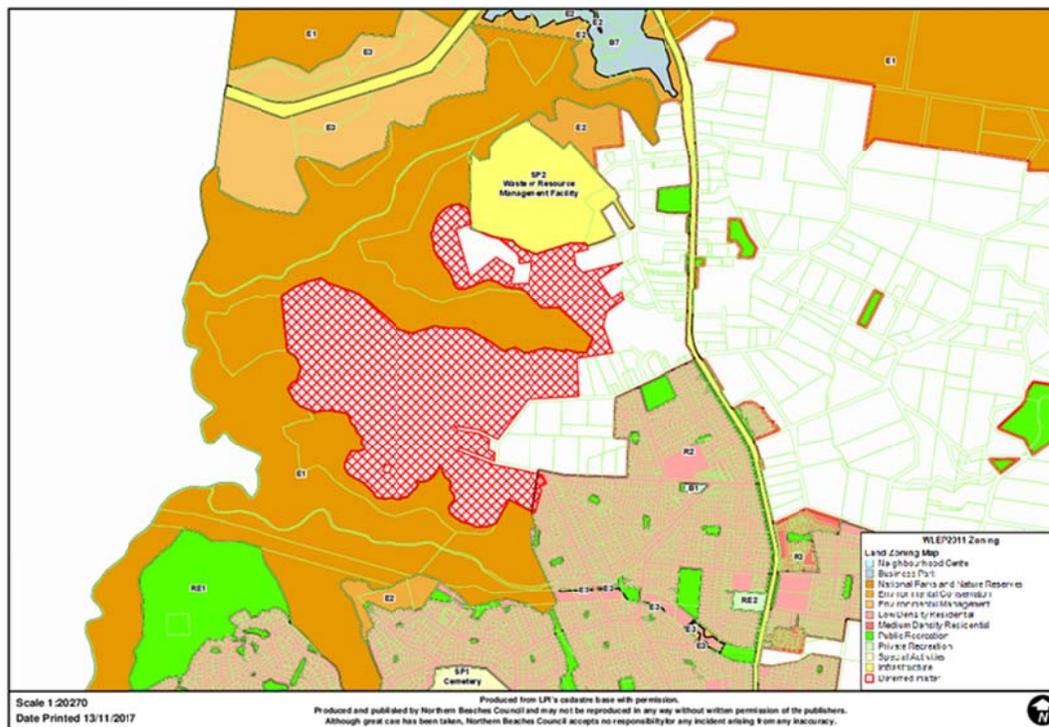


Figure 5 – Zoning of Adjoining sites under WLEP2011

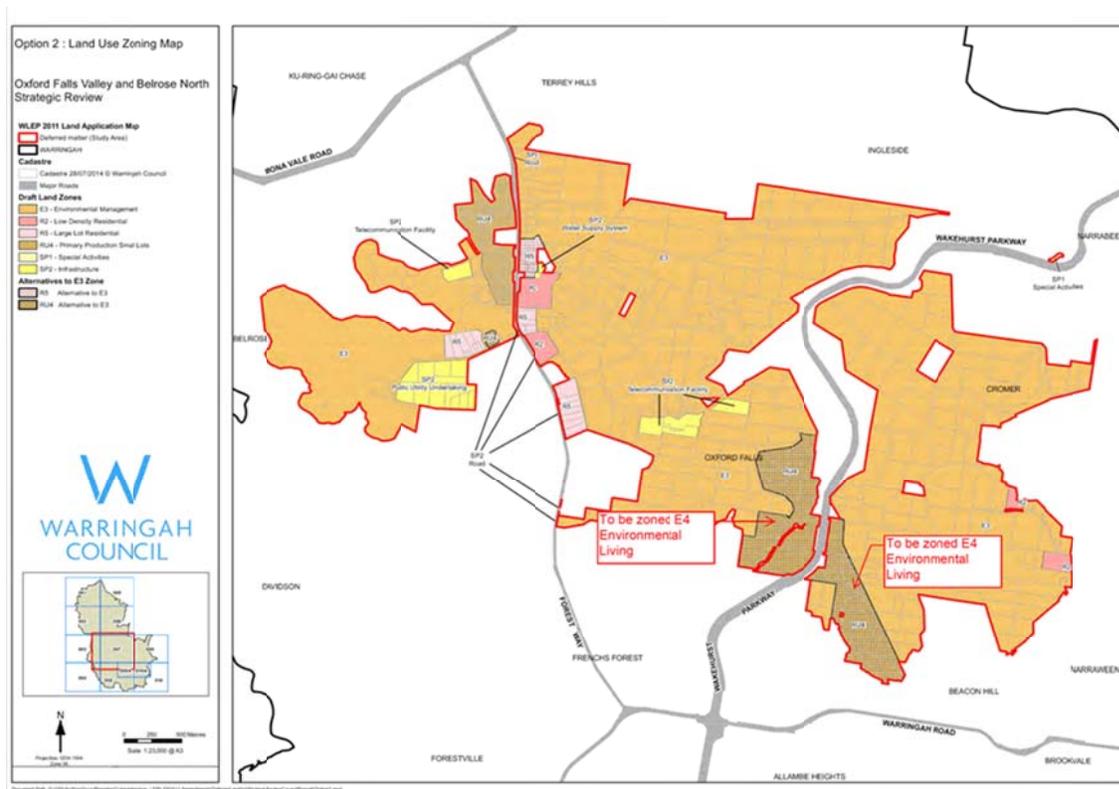


Figure 6 – Oxford Falls Valley and Belrose North Strategic Review

## 5. COMMUNITY CONSULTATION

Council placed the Updated Planning Proposal and draft VPA on public exhibition from Saturday 27 May to Sunday 25 June 2017. During this time, Council engaged the community through the following activities:

- Updates to two projects websites with frequently asked questions and links to exhibition documents:
  - [Planning Proposal – Ralston Avenue \(Belrose\)](#) (2,160 visits)
  - [Voluntary Planning Agreements \(Exhibition\)](#) (312 visits)
- Targeted emails and/or letters to respondents from the pre-gateway exhibition
- Notices in the Manly Daily 27 May; 3 June; 10 June and 24 June 2017
- Notification letters to 570 adjoining properties
- A drop-in session at the Glen Street Library on 7 June from 5-7pm (attended by approx. 40 people)
- Availability of printed materials at Council's Customer Service Centres (Manly, Dee Why and Mona Vale) and Libraries (Forestville, Warringah Mall, Dee Why and Glen Street from 3 June 2017)
- Notification signs on site and on the Community Notice board at the Ralston Avenue Shops.

The Proponent undertook their own consultation activities which included an information session, signs on site, info-line, letter box drops, a project website and email address. Council referenced the Proponent's contact details in Council's exhibition material.

Council received 243 submissions from individuals or groups through their website, email and/or post (276 submissions in total including duplicates and multiple responses from some individuals).

Most respondents highlighted their objection to the proposal (84%). Some expressed support (2%) while some expressed conditions in which the proposal could be accepted (4%). The remaining responses (10%) either did not say or were unrelated.

Most submissions referred only to the Planning Proposal (65%), while 35% mentioned both the Planning Proposal and VPA.

The majority of respondents (61%) were residents living close to the proposed development (Belrose, Frenchs Forest, Davidson and Oxford Falls). A large contingent was recreational users of bushland, mentioning the value they placed on walking, horse riding and mountain biking in the area. A large proportion of respondents mentioned they were mountain bikers who used trails on the subject site and other MLALC lands (34/240 = 14%). It is likely the number of mountain bikers who responded was greater as many raised similar concerns without necessarily stating they were mountain bikers.

Following is a list of key themes that arose from the public exhibition. Council's response is mostly addressed in Council's assessment, with additional details and responses in Attachment 6.

### 5.1 Broader Policy and Land Management Concerns

The following broader policy and land management concerns were raised by respondents:

- **Overdevelopment of the area (x43):** area already subject to too much development (e.g. John Colet school expansion, Belrose Super Centre, hospital roadworks) and will be further impacted by proposed future developments (e.g. Ingleside and the Hospital Precincts).
- **Government policy on recreational use of bushland (x13):** Government should encourage rather than discourage recreational use of bushland, especially mountain biking.
- **MLALC as land managers and developers (x46):** questions around MLALC's right to develop their land and concern the development will set a precedent. Concern that developers will mistreat the land and gain too great a profit.
- **Recreational access to MLALC land (x30):** Frustration with MLALC for destroying established mountain biking facilities on their land and for using police to restrict recreational access for walkers and mountain bikers.

Council's response is mostly addressed in Council's assessment, with the following exceptions:

- MLALC land is privately owned and recreational access is at the discretion of MLALC.
- The Proponent has clarified that land claimed under the *Aboriginal Land Rights Act 1983* is intended as compensation for past injustices and does not require a cultural association to be established. This land is transferred by a freehold title enabling the Aboriginal Land Council to decide whether to sell, redevelop and/or retain land under their ownership.
- Council's assessment is based on the Department's 'Guide to preparing planning proposals' (August 2016) and is not influenced by the Applicant or Developer or the beneficiaries of profit.

## 5.2 Objections to the Proposal

The following issues were raised by those who objected to the Planning Proposal:

- **Biodiversity (x122):** Significant irreversible loss of biodiversity and threatened species and impacts on the National Park. Concern that the proposed E3 zoning is not compatible with the offset objective. OEH do not support the proposal.
- **Traffic and Transport (x103):** Increase in traffic congestion in area already under pressure especially at school times and sports days. Noise pollution from cars and buses. Reduced safety for children, horses, and drivers. Traffic study out of date regarding recent and proposed developments. Proposed 'seagull treatment' inadequate and not much different to current arrangements. Increased in public transport required.
- **Bushfire risk (x58):** RFS does not support the proposal. Hazardous area with substation preventing safe evacuation. Difficulty in managing APZs in perpetuity.
- **Recreational access to site:** Loss of bushland highly valued for recreation by residents and visitors to the area (x52). Increased recreational access will have adverse environmental impacts (x22).
- **Loss of Amenity (x46):** Change in character and ambience of the neighbourhood and high visibility impacts of developing the ridgeline.
- **Alternate use of site (x 43):** Land should be preserved for future generations. Land should be zoned E3 as per Strategic Land Review. Suggested alternate use for sporting facilities.
- **Water Management (x40):** Stormwater contamination from exotic weeds, herbicide, pesticide, fertilisers, diesel, fuel, oil, chemicals and waste. Stormwater impacts on the Giant Burrowing Frog and Red-crowned Toadlet and the National Park. Inadequate studies to assess negative impacts.
- **Housing Issues (x24):** Excessive amount of housing proposed with the potential to intensify use through permitted uses within R2 Low Density Residential zones. Inconsistency with the strategic planning framework and lack of opportunities for affordable housing.
- **Aboriginal Heritage impacts (x22):** Land was claimed for heritage value. Land contains Aboriginal sites and Aboriginal heritage may be destroyed.
- **General Infrastructure (x15):** Insufficient infrastructure to support development (e.g. sports fields and schools). Public Park would only benefit new community and will become a cost burden to Council.

Council's response is mostly addressed in Council's assessment, with the following exceptions worth noting in this report:

- OEH and RFS advice referred to in submissions pre-dated the application under consideration. However, updated advice confirms they do not support the Updated Planning Proposal.
- There is no entitlement for the public to access land privately owned by the Metropolitan Aboriginal Land Council.

### 5.3 Support for the proposal

The following general comments were made in support of the proposal. This includes comments from those who supported the proposal subject to conditions:

- John Colet School welcomes further development and more families in the area.
- MLALC has rights to develop their land.
- Land release preferred over high density.
  - R2 and RE1 zones occupy a small percentage of total landholding.
  - Land will no longer be used as dumping area or degraded by 4WD and trail bike users.
  - Threatened species can re-establish in National Park.
  - Site is well served by transport, schools, hospitals and shopping centres.
  - Increase in supply will help to address affordable housing.
  - Growth will benefit schools, sporting clubs, service organisations and business.
  - Proposed fire management will protect houses unlike other unprotected residential areas.
  - Provides opportunities for innovative fire management practices such as cultural burning and diversity of fire as exemplar of cool burn, low smoke control with less impact on fauna.
  - Fire management can encourage educational and research benefits and purposeful cooperation with NPWS.

## 6. PLANNING PROPOSAL ASSESSMENT

Council has undertaken an assessment in accordance with the Department's 'Guide to preparing planning proposals' (August 2016). This process requires Council to assess whether the proposal has Strategic or Site-Specific Merit. The outcomes of this assessment are detailed below with further detail in Attachment 1.

### 6.1 Strategic Merit Assessment

#### 6.1.1 District and Regional Plans and Local Strategy

The Proponent argues the proposal has strategic merit due to the delivery of additional housing, recreation facilities and traffic and transport infrastructure. Also cited as points of strategic merit were support for the Aboriginal Community, measures to preserve bushland through Biocertification, and managing bushfire risks to existing and proposed residential properties and surrounding public assets. The Proponent further argues that the Updated Planning Proposal hasn't changed the strategic justification that underpinned the decision by the Department to issue a Gateway determination in 2015.

On balance, Council's assessment of the Updated Planning Proposal concludes that the proposal does not have strategic merit having regard to updated studies, agency input and consultation. It was found to be generally inconsistent with the Regional Plan – A Plan for Growing Sydney and the Greater Sydney Commission's draft Greater Sydney Region Plan (draft Regional Plan - DRP) and Revised draft North District Plan (RDDP).

The proposal was also found to be inconsistent with the goals of Council's Draft Community Strategic Plan (Shape 2028), draft Warringah Housing Strategy 2011 and the Oxford Falls Belrose North Strategic Review. It is also inconsistent with the local provisions and Policies which aim to protect the environment.

Council does not have a relevant local strategy endorsed by the Department of Planning and Environment and the proposal is not responding to any change in circumstances.

In summary, Council found the proposal did not have strategic merit for the following reasons:

- **Inappropriate location for housing:** The proposal is not considered a suitable local opportunity to increase housing capacity and is not needed to deliver Council's five-year housing target of 3,400 which reflects delivery potential under current planning controls. The Development Site is within bushland adjacent to, not within an established urban area. Council's Bushfire Consultant, the RFS and TransGrid do not consider the site feasible for residential development. Development of this site is inconsistent with the values of the Metropolitan Rural Area, as this site is identified in Figure 48 of the draft Greater Sydney Region Plan. This Plan outlines that Priority Growth Areas in the Western Parkland City generally provide a long-term supply of land for the growth of Greater Sydney and eliminate the need for urban expansion into the Metropolitan Rural Area.
- **Ad hoc nature of the proposal:** The proposal has not been identified in any local housing strategy or subregional planning process for the provision of additional housing. It is not part of the Priority Precincts program and there are no plans to support this growth with infrastructure such as transport and schools. The Revised draft North District Plan does not identify ad-hoc land release as a mechanism to achieve the North District's five-year housing target and the site was not identified for development potential in the former Warringah's draft Housing Strategy 2011. The site has not been identified as having future development potential in either Stage 1 or 2 of the Oxford Falls Belrose North Strategic Review (Strategic Review).
- **Environmental Impacts:** The proposal does not comply with local planning controls that limit development to protect the environment. It is inconsistent with Council policies to protect biodiversity and waterways, and would impact on the scenic qualities of a ridgeline. Council and OEH do not support the proposal as it would likely have significant impacts on biodiversity including threatened species.
- **Resilience to Natural Hazards:** The site would be highly exposed and vulnerable to significant bushfire risks, especially with respect to impacts from climate change. The proposal would create undue stress on the State's firefighting service which will be impacted by an increase in average and severe fire weather in NSW in the future. An analysis by Council's Bushfire Consultant confirmed that the site cannot be safely evacuated and concludes the proposed development should not proceed. RFS does not support the proposal as it fails to demonstrate how the rezoning will not result in an increase to the risk to life from bush fires, including firefighters.

Although the proposal includes the provision of recreational facilities, it is considered only partially consistent with relevant Directions, Actions and Priorities as National Parks and Wildlife Services (NPWS) does not support increased recreational access to the National Park and Council and OEH are not satisfied that environmental impacts within the offset areas (i.e. the E3 Environmental Management Area) have been adequately addressed. Also, the clearing / modification of at least 25 hectares of bushland would contribute to the removal of green space highly valued by the community.

Council also acknowledges that the proposal would facilitate the economic use of Aboriginal land acquired under the *Aboriginal Lands Rights Act 1983*. However, development of this site is not the only means to achieve this outcome.

The provision of traffic and transport infrastructure is more a requirement of any future development application rather than grounds for strategic merit.

In conclusion, it is considered the above strategic and risk based considerations outweigh any potential benefits of the development.

### 6.1.2 State Environmental Planning Policies

The proposal was found to be inconsistent with the following key State Environmental Planning Policies (SEPPs):

- **SEPP No 19—Bushland in Urban Areas:** The proposal is inconsistent with the specific aims of this SEPP. Council is not satisfied that the proposal will result in significant environmental, economic or social benefits that outweigh the value of the bushland.
- **SEPP (Infrastructure) 2007:** It is inconsistent with SEPP (Infrastructure) 2007 as it has not addressed likely impacts on an electricity transmission network and associated concerns of an electricity supply authority (i.e. TransGrid) for development immediately adjacent to an electricity substation.

### 6.1.3 Ministerial Directions

The Proposal was found to be inconsistent with the following Ministerial Directions:

- **2.1 Environmental Protection Zones:** By changing planning standards which protect the environment through restricting residential development to 1 dwelling per 20 hectares.
- **4.4 Planning for Bushfire Protection:** By placing inappropriate development in a hazardous area. RFS do not support the proposal as it does not achieve the primary objectives: to protect life, property and the environment from bush fire hazards by discouraging the establishment of incompatible land uses in bush fire prone areas; and to encourage the sound management of bush fire prone areas.
- **6.3 Site Specific Provisions:** As site specific provisions may be required to prohibit certain uses in the proposed R2 Low Density Residential Zone (e.g. childcare centres and group homes) and E3 Environmental Management Zone (to align with the intended use of an offset site)
- **7.1 Implementation of A Plan for Growing Sydney:** By undermining the achievement of its planning principles; directions; and priorities. Especially those that encourage a risk-based approach to strategic planning through halting development in high risk areas.

### 6.2 Site Specific Merit Assessment

The Proponent argues that the proposal has site specific merit for the following reasons:

- It results in the retention and protection of the surrounding natural bushland
- Bushfire and ecological issues are managed to avoid unacceptable impacts or risk to human life or safety
- The indicative subdivision layout design integrates with the surrounding locality
- Adequate services and infrastructure are provided with significant public benefits to meet the needs of the proposed development and at no cost to Government

The Proponent argues that each of the above matters is addressed in the Updated Planning Proposal and by way of the Gateway determination.

Upgrades to some infrastructure and services included in the Planning Proposal appear feasible to accommodate the future residential population (i.e. water, wastewater and potentially electricity – see Attachment 2 – Public Authority Responses).

However, Council considers the Planning Proposal does not have site-specific merit having regard to the following:

- Known significant environmental values, specifically impacts on threatened species and the adjoining National Park
- Known significant hazards, specifically bushfire risk and the proximity of the Sydney East Substation
- Financial arrangements for infrastructure provision.

Also, there remain unresolved issues with respect to the provision of stormwater and social infrastructure. The above issues are discussed further below.

### 6.2.1 Biodiversity and Threatened Species

Neither Council's Natural Environment and Climate Change (NECC) Division nor OEH support the proposal as it would likely have a significant impact on biodiversity and threatened species, including impacts to:

- Endangered Ecological Communities (Duffys Forest and Coastal Upload Swamp)
- Habitat and potential indirect impacts to the critically endangered *Grevillea caleyi*
- The Vulnerable (TSC Act) plant, *Tetratheca glandulosa*
- The known habitat of 10 threatened fauna species, with the following four (4) species considered to offer a constraint to development:
  - Rosenberg's Goanna (*Varanus rosenbergi*)
  - Eastern Pygmy Possum (*Cercartetus nanus*)
  - Red-crowned Toadlet (*Pseudophryne australis*)
  - Giant Burrowing Frog (*Heleioporus australiacus*)
  - The following three threatened fauna species considered to have habitat on the site:
    - Southern Brown Bandicoot (*Isoodon obesulus*)
    - Spotted-tailed Quoll (*Dasyurus maculatus*)
    - New Holland Mouse (*Pseudomys novaehollandiae*)
- ROTAP (Rare or Threatened Australian Plants) such as *Eucalyptus luehmanniana* and *Angophora crassifolia*.

These impacts would result from the clearing/modification of at least 25 hectares of native vegetation<sup>1</sup>, stormwater contamination and bushfire management practices within APZs and strategic fire advantage zones (e.g. frequent burning and/or under scrubbing, herbicide application, watering, trail construction).

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<sup>1</sup> This estimate is based on the total 28.91ha floristic impacts, excluding the 3.57ha of cleared area (Table 1, pg iv, Ecological Assessment, Travers, 2017). Otherwise, the estimate is taken from the 17.57-hectare R2 Low Density Residential Zone (assumed to be cleared), plus the 10.64 hectares of APZs in the E3 Environmental Management zone (including TransGrid Easements) which is assumed to be modified.

Council is not satisfied that the environmental impacts have been adequately assessed and is concerned that the Proponent's Assessment of Significance relies on unproven mitigation measures which should not be considered in determining the degree of the effect on threatened species (e.g. stormwater controls or restrictions on cat ownership).

See Attachment 2 – Public Authority and Utility Responses and Attachment 3 Council's Natural Environment and Climate Change Referral Response.

### **Biodiversity Certification**

The Proponent has proposed Biodiversity Certification of the site as recommended by OEH. This process involves the assessment and approval of biodiversity and threatened species impacts at the time of rezoning, rather than with each subsequent Development Application for development on the land.

Biodiversity Certification requires a planning authority (e.g. Council or a State Government Department) to propose an area for certification and to exhibit a Biodiversity Certification Assessment and Biocertification Strategy (BCA&BS) together with the Planning Proposal.

The Proponent prepared a BCA &BS in accordance with the requirements of the *Threatened Species Conservation Act 1995*. However, Council determined that it was not in a position to propose the area for biodiversity certification until it had made a detailed assessment of the Updated Planning Proposal.

Council consequently advised the Proponent it would consider biodiversity certification in the report to Council following public exhibition of the Planning Proposal (i.e. this Report).

Because the proposed Biodiversity Certification remains unresolved, OEH could not comment on the strategy for compensating for loss of biodiversity and proposed conservation measures (including biobanking of land, transfer of lands to the OEH estate or co-management of the land).

Council notes the Proponent's BCA & BS requires updating, and relies on 'Red Flag' variations which require approval by the NSW Minister for the Environment. Offsets additional to those identified in the proposed E3 Environmental Management Area may also be required.

Following consideration of the updated studies and public authority feedback, it is considered that Council should not be the Applicant for Biodiversity Certification as the Updated Planning Proposal is not supported in principle.

The new *Biodiversity Conservation Act 2016*, which commenced on 25 August 2017, repeals the *Threatened Species Conservation Act 1995* and allows two potential pathways for biodiversity certification:

1. By progressing the assessment already undertaken in accordance with the repealed legislation. This would require the proponent to secure an alternative relevant public authority to be the applicant, such as the Department. As the biodiversity certification has substantially commenced, the proposed application may still be made under Part 7AA of the *Threatened Species Conservation Act 1995* as specified in the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*. OEH has advised that the site is proposed to be included in an order to enable "saving" of the proposed biodiversity certification application.
2. By submitting a new application under the provisions of the new legislation.

Should the Updated Planning Proposal proceed, the Proponent would need to adequately avoid, mitigate and then offset all environmental impacts through a formal process such as Biodiversity Certification (subject to a planning authority becoming the Applicant), biobanking and or establishment of a biodiversity stewardship agreement under the NSW *Biodiversity Conservation Act 2016*.

Furthermore, Council staff recommend that, should the Planning Proposal proceed, the proposed E3 Environmental Management Area is zoned E2 Environmental Conservation, consistent with zone objectives, permissible land uses and intended use of this land (an offset).

### 6.2.2 Impacts on the National Park

OEH and NPWS have highlighted the supporting documents do not identify and address additional issues for National Park management, including:

- The potential very large increase in impacts on the National Park visitors, fauna (including threatened species) and National Park management (including fox baiting) of domestic pets, particularly dogs and cats
- Concern over erosion issues and impacts on threatened species from formalising recreational access to the National Park
- The effect of stormwater discharge into the National Park which could also have impacts on fauna species such as the threatened Red-crowned Toadlet and Giant Burrowing Frog
- The difficulty of implementing and enforcing the proposed mitigating measure to ban cats
- Increased resourcing required for bushfire asset protection within Garigal National Park
- The impacts of intensive fuel management measures in APZs on erosion and weed management in the adjoining E3 Environmental Management Area and Garigal National Park

As consultation with NPWS has not occurred (as advised by NPWS) and these issues have not been addressed, NPWS advises that it does not support the proposal and recommends that it not progress.

Whilst Council would support increased formalised recreational access to bushland, it would be on the condition that adequate environmental assessments were undertaken together with formal agreements with landowners including OEH.

### 6.2.3 Aboriginal Heritage

Correspondence in February 2015 and June 2017 confirmed that OEH were not satisfied that Aboriginal cultural heritage issues had been adequately addressed. The Aboriginal Archaeological Due Diligence Assessment (AADDA) submitted with the original Planning Proposal (Dominic Steele Consulting Archaeology, 2012) was considered inadequate to assess the impacts on the Aboriginal archaeological and cultural heritage values of the site, especially as did not include any Aboriginal community consultation.

On 1 November 2017, the Proponent submitted an Aboriginal Archaeological & Cultural Assessment (AACHA – Dominic Steele Consulting) which updated and developed the findings of the AADDA and included consultation with the Aboriginal Community in accordance with the 'Aboriginal Cultural Heritage Consultation Requirements for Proponents' (DECCW 2010).

The AACHA concludes that the proposed subdivision and development proposal will not impact on any known Aboriginal archaeological sites or objects as protected under the *National Parks and Wildlife Services Act 1974*, any areas of suspected archaeological sensitivity, or any specific Aboriginal cultural values as identified through consultation. It surmised there were no Aboriginal archaeological constraints apparent for the proposal proceeding as planned subject to the implementation of the management recommendations.

Council referred the AACHA to the Aboriginal Heritage Office (AHO) for comment in November 2017. AHO concluded the report's findings are consistent with previous reports and with the

archaeological model for the area and consistent with what the AHO would expect for this locality. They considered the Aboriginal community views had been taken into consideration.

#### 6.2.4 Bushfire Risk

##### Pre-exhibition studies and consultation

Bushfire risk has been the subject of several studies and reports as well as extensive consultation between the Proponent, Department, RFS, and Council. The NSW RFS has repeatedly expressed concerns of the significant bushfire risks and the requirement to meet the provisions of Planning for Bush Fire Protection 2006 (PBP) in correspondence to Council dated June 2013, February 2015, June 2015 and July 2015.

In April 2016, Council commissioned a peer review of the bushfire planning documentation submitted with December 2015 Planning Proposal (Blackash Peer Review) as it did not have the in-house expertise to assess the impact of proposed bushfire management processes (e.g. clearing in Asset Protection Zones) on the ecology of the site. The Blackash Peer Review found:

- The proposal focused on technical issues such as widths and management of asset protection zones (APZs) but failed to address the strategic planning requirements to avoid the placement of inappropriate developments in high-risk locations as required by A Plan for Growing Sydney and in the s.117 Direction 4.4 Planning for Bushfire Protection 2006;
- The site had the potential to be isolated by fire, exacerbated by the north-west orientation and location on a ridgetop peninsular surrounded by bushfire prone vegetation and deep valleys;
- Access and egress on the two roads had the potential to be cut (multiple times) at pinch points surrounded by unmanaged vegetation;
- No documentation had identified or addressed the extremely dangerous situation caused by the location of the high voltage power lines over both Wyatt and Ralston Avenues. In the event of a bushfire emergency, smoke and hot gases directly under or near a high voltage transmission lines can create a conducting path which can increase the potential for life-threatening arcing, similar to a lightning strike;
- The RFS do not allow fighting under or within 25 metres of high voltage power lines, therefore the location of these assets would prevent safe operational firefighting access which is a fundamental requirement of the Planning for Bushfire Protection Guidelines 2006 (PBP).
- The proposal does not address obligations and actions that can be taken under the *Rural Fires Act 1997* to mitigate the impact of fire on communities. Such mechanisms place at risk, areas set aside for ecological reasons. The tension between the absolute need to protect life, will always take precedence over the need to maintain ecological values.

The Blackash Peer Review concluded that no development should be permitted on the site.

Given the nature of the above findings, Council provided a copy of the Blackash Peer Review to RFS in June 2016 and presented the findings to RFS in August 2016. In September 2016, the Deputy Commissioner of the Rural Fire Service wrote to Council to advise that the Planning Proposal is not consistent with s.117 Direction 4.4 Planning for Bushfire Protection 2006 and should not proceed in its current form.

Whilst the Bushfire Peer Review was initially commissioned as an internal document to aid in Council's assessment, a copy of the Blackash Peer Review was provided to the Proponent in September 2016. The Proponent engaged directly with the RFS in response and sought another consultant (Peterson Bushfire) to peer review their bushfire planning documentation.

### Exhibition studies

The Updated Planning Proposal submitted in April 2017 included an updated Bushfire Protection Assessment and Fuel Management Plan (Travers) responding to the above consultation and studies. The Assessment concluded that bushfire risk could be suitably addressed through the implementation of combined bushfire protection measures (including Asset Protection Zones). It argued that the requirements established in s.117 Direction 4.4 Planning for Bushfire Protection and A Plan for Growing Sydney had been satisfied.

Council engaged Blackash Consulting to undertake a further review of the updated Bushfire Protection Assessment and Fuel Management Plan (Blackash Strategic Bushfire Review – September 2017). As part of the Strategic Bushfire Review, Blackash undertook an analysis of Bushfire Attack levels (see Figure 6).

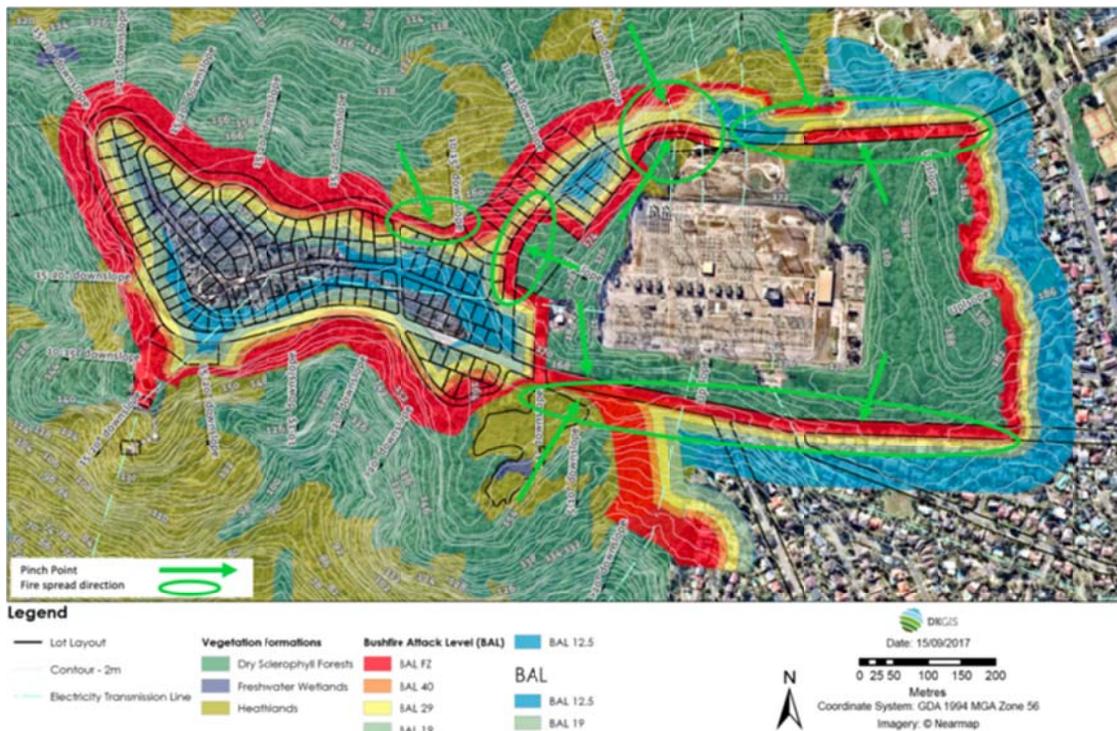


Figure 7 – Bushfire Attack Levels and Pinch Points, Figure 1 of the Strategic Bushfire Review (Blackash consulting, September 2017)

The Blackash Strategic Bushfire Review found the revised documentation still did not address the broader site context such as the proximity of the Sydney East substation, associated infrastructure and the high voltage power lines to the east of the site. The updated reports failed to address concerns associated with arcing from the 330kva power lines and likely disruption of planned evacuation routes.

The analysis of Bushfire Attack Levels demonstrated that all access and egress points could be immersed in flame, presenting radiant heat levels that would be life threatening to people exposed in the open or in vehicles attempting to flee the site (Figure 7). Five significant pinch points were identified that would further compromise access and egress during a bushfire emergency.

The Blackash Strategic Bushfire Review concluded that the rezoning should not proceed and that no further development should be permitted on the site. It reiterated the strategic necessity to guide new development away from known high hazard areas to address future risks, especially in light of the changing climate. It referenced the findings of the 2009 Victorian Bushfires Royal

Commission which recognised the critical importance of landuse planning as a mechanism to prevent or deter people from living in areas of unacceptably high bushfire risk.

### Post public exhibition studies

Following the public exhibition period, the Proponent undertook further discussions with the RFS and commissioned an additional report by Eco Logical Australia (Ralston Avenue Belrose Planning Proposal: Review, 16 August 2017 – Eco Logical Review). The review included a comparison of the existing bushfire risk of the urban -bushland interface with the bushfire risk of the future interface under the Updated Planning Proposal.

The Eco Logical Review argued the highest risk to life and property in the locality is not associated with new development, but with older housing stock and the existing urban interface. It argued the proposed development would serve as a buffer, providing 'shielding benefits' to the existing interface of older, non-compliant housing stock and the substation which is currently at extreme risk to bushfire attack. It concluded that the risk from bush fire to the community would be reduced overall; stating a reduction of these risks is unlikely achievable by any other means than a planning proposal similar to that reviewed.

The Eco Logical Review considered the proposal suitable for approval subject to some refinements. It included the following recommendations:

- i. Improvements to the community-wide bushfire risk associated with the subject planning proposal be considered as an appropriate way to fulfil the *Environmental Planning and Assessment Act 1979* Section 117(2) directions;
- ii. The following strategic level improvements to the planning proposal be considered:
  - a. The understorey and ground level fuels within the TransGrid property be maintained at an APZ standard e.g. in a management agreement between community title and TransGrid
  - b. Application of a garden landscape covenant based upon national best practice design
  - c. Provision of a Neighbourhood Safer Place and/or larger APZs for lots most at risk of a head fire under an FFDI >50.

In response to the updated studies, the RFS wrote to Council 18 October 2017. The RFS considered the Eco Logical Review showed only limited benefits to the existing community including the Sydney East Substation, against the current situation if the proposal did not proceed. The RFS pointed out that the Eco Logical Review demonstrated potential future occupants would have an inadequate response time to safely and effectively evacuate in the event of a wild fire.

The RFS concluded that the proposed development is likely to result in unsustainable and problematic bush fire risk management of the landscape for the NSW RFS and future land owners. It considered the proposal would place the NSW RFS's own firefighting resources under increased pressure as well as placing firefighters and a new community within an unacceptable area of risk.

The risks to existing properties highlighted in the above report have been acknowledged by the RFS.

The proponent has responded to the RFS's most recent correspondence disputing its assessment of bushfire risk. They consider that the RFS response is a major departure from the RFS advice provided prior to September 2016. They expressed concern that the RFS's change in position has not been accompanied by any detailed assessment which justifies the position of opposition.

## Conclusion

Both the RFS and Council's Bushfire Consultant conclude the proposal is inconsistent with S117 Direction 4.4 Planning for Bushfire Protection, as it would place inappropriate development (i.e. housing) in a hazardous area.

Council cannot support the proposal in light of the serious risks to life and property. Council's assessment has relied on the Peer Review and Strategic Bushfire Review by Blackash consulting and advice from the RFS which is the relevant authority in bushfire management. Council's bushfire consultant is considered to have suitable experience in this assessment including over 10 years' experience at a state level with the RFS. The Bushfire Attack Level assessment provided in the Strategic Bushfire Review is considered to provide suitable evidence of the extreme risks to life and property that would result if the proposal were to proceed.

### 6.2.5. Proximity to the Sydney East Substation and associated infrastructure

The proposed residential development is located west of the 330kV/132kV Sydney East substation owned and operated by TransGrid. TransGrid also operates the Sydney North – Sydney East 330kV transmission lines and easements that are located to the north of the substation.

Ausgrid operates overhead electricity network assets in Ralston Ave and the proposed extension area of Wyatt Ave. There are also Ausgrid overhead transmission assets which cross Ralston Ave either side of the Elm Ave intersection.

The following issues are associated with the proposed development's proximity to these assets:

- **Arcing:** The location of high voltage power lines has the potential to cause life-threatening arcing during a bushfire; restricting access and egress to the site and preventing firefighting operations within the vicinity (see 6.2.4 Bushfire Risk). Arcing can also cause damage to nearby equipment and the transmission line and possible interruptions.
- **Potential for major loss of electricity supply due to bushfire:** Any requests to de-energise transmission lines as permitted under Section 44 of the *Rural Fires Act 1997* will have major implications to electricity supply across Sydney, possibly leading to a widespread loss of supply to the Northern Beaches, Ku-ring-gai and other areas North of Sydney's CBD. This would have the potential to extend the loss of life. The de-energising process would take several hours so would not allow an adequate response time to evacuate short run fires which could take between 10 minutes to an hour to reach the site.
- **Easements:** TransGrid has expressed concern the proposal has not considered existing land use rights including its registered easements that allow access for operation and maintenance to essential public infrastructure.
- **Noise levels:** TransGrid is concerned that the separation between the proposed residential subdivision and the substation is inadequate and may not be able to accommodate a suitable noise buffer for future residents.
- **Safety:** TransGrid is concerned that the proximity of the proposed bushland park and backyards to the substation as a safety issue. It is concerned that activities such as ball games and kite flying could cause damage to TransGrid's essential infrastructure and create a danger to the public.

TransGrid objects to the rezoning of the subject site for residential development as it would pose an unacceptable risk to TransGrid's infrastructure and the safety of the public.

Although Ausgrid consents to the development, it is unlikely the proposal can comply with their condition that at least one evacuation path is accessible at all times (see 6.2.4 Bushfire Risk).

In response to TransGrid's submission, the proponent provided a Noise Impact Assessment of TransGrid Substation (TTM - 25 October 2017) which concluded the proposed subdivision is expected to comply with the relevant guidelines and standards with no additional noise mitigation measures required. They also provided the following comments:

- The Planning Proposal has the potential to provide a safer urban interface, including bushfire shielding benefits enhanced by in-perpetuity fuel management within the TransGrid Sydney East substation lands. The required maintenance works could be undertaken by way of management agreement between the community title and TransGrid to avoid increase maintenance costs to TransGrid.
- The 'Bushland Park' will not be used for active recreation due to its purpose to protect and retain Duffys Forest. The residential properties are well setback from the TransGrid boundary, with separation distances exceeding 30 metres and comprising natural vegetation and soil berms.

If the Planning Proposal were to proceed, further comment from TransGrid is required to determine whether the Proponent's response alleviates their concerns. Council notes however the Proponent's latest response, and studies completed to date, do not address the significant life safety issues associated with high voltage power lines which would prevent access and egress during a bushfire event and restrict access for fire-fighting services.

Council considers the proposal has not adequately considered the likely impacts on an electricity transmission network and associated concerns of an electricity supply authority (i.e. TransGrid) for development immediately adjacent to an electricity substation. This is a requirement under SEPP (Infrastructure) 2007.

### **6.3. Infrastructure**

A number of the below comments relate to the draft VPA. A summary of Council's assessment of the draft VPA is provided below. More detail can be viewed in Attachment 3 – Council's Natural Environment and Climate Change Referral Response and Attachment 4 – Council's Internal Referral Responses.

#### **6.3.1 Traffic and Transport Infrastructure**

An Assessment of Traffic Implications report was prepared by Transport and Traffic Planning Associates and submitted with the original Planning Proposal. This report concluded the proposal was satisfactory having regard to road and intersection capacity, traffic related environment implications and traffic management and safety. The accompanying draft VPA proposes traffic and transport infrastructure including the delivery of a seagull intersection treatment at the junction of Forest Way and Ralston Avenue.

In their response dated 18 July 2017, RMS raised no objections to the proposal. However, RMS support is contingent on Council entering into a VPA for the construction of the proposed seagull treatment works. Transport for NSW (TfNSW) provided conditions to be considered in the subdivision application and requires upgrades to Wyatt Avenue to be included in the VPA.

In response to community concerns raised during the public exhibition, the proponent lodged a Revised Transport, Traffic and Assessment Report (Transport and Traffic Planning Associates - September 2017). The updated report provided a revised assessment of the potential traffic impacts having regard for updated survey results, new developments in the area and the revised Lot yield. It indicated the traffic conditions had not significantly changed since 2012, and concluded:

- The envisaged development will not result in any adverse traffic implications (subject to the formalisation of a 'seagull' arrangement at the Forestway/Ralston Avenue intersection)
- The envisaged access road system will accommodate all vehicles requiring access including buses
- The traffic issues raised by authorities and the community have been addressed and suitably responded to

Council staff have reviewed the Revised Transport, Traffic and Assessment Report and advised that their previous traffic comments are still applicable. In this regard, Traffic and Transport infrastructure requirements are more relevantly assessed at subdivision layout which is more appropriately addressed via the development assessment process. Should the proposal proceed, Council would support a signalised intersection at Ralston Ave / Forest Way subject to agreement with RMS. Council has also suggested additional infrastructure to improve safety (e.g. roundabouts) and accessibility (e.g. shared paths, bike paths and the formalisation of the Bridle Trail).

### 6.3.2 Stormwater Infrastructure

OEH and Council are not satisfied that issues associated with stormwater management have been adequately addressed. Based on Council's experience with other residential subdivisions on the Northern Beaches, hydrological impacts will likely extend downstream of the development irrespective of the installation of best practice water management facilities. This will likely lead to degradation of downstream environments and have adverse impacts on the National Park, Red-crowned Toadlet and Giant Burrowing Frog and the Coastal Upland Swamp EEC.

Council's Natural Environment Division concluded the proposal does not comply with the local water management planning controls and policies. Of note, the proposed nutrient reduction targets do not comply with the Stormwater Quality Objectives of Council's Water Management Policy, which establishes no-impact criteria for sensitive receiving environments (see Attachment 3 – Council's Natural Environment and Climate Change Referral Response).

It is not entirely clear where the proposed stormwater management infrastructure is proposed to be located. It is likely the proposal will require significant additional areas for stormwater management facilities to meet targets in the Stormwater Quality Objectives of Council's Water Management Policy. Should the Planning Proposal proceed, Council would need further details to ensure the size, location and effectiveness of water management facilities have been taken into account within Environmental Assessment studies. Management of these facilities would need to be via a community title arrangement.

### 6.3.3 Utility Services

The Proponent's Infrastructure Services Strategy (Warren Smith and Partners, 2012) suggests that adequate services can be made available to enable the site to be developed for residential purposes. Sydney Water has confirmed there is adequate capacity to supply water and wastewater services to the site. Ausgrid has recommended the Proponent undertake a preliminary enquiry to ensure the existing network can support the expected electrical load of the development. Should the Updated Planning Proposal proceed, further consultation with Sydney Water is recommended to ensure adequate water is available for firefighting purposes.

Council notes the proximity of electrical infrastructure has associated risks which are discussed in Proximity to the Sydney East Substation and associated infrastructure.

#### 6.3.4 Social Infrastructure

The Proponent's Social Impact Assessment (Hill PDA, November 2012) recommended further discussions with Council on the most appropriate means to address the additional demand for community infrastructure generated by the proposed development. To date, the Proponent has not taken into account earlier comments with respect to the draft VPA (see Voluntary Planning Agreement (VPA) Proposal).

If the Planning Proposal were to proceed, Council would require adequate development contributions to meet the increased demands on social infrastructure. A contribution to sporting facilities is recommended by Council's Parks and Recreation Division.

As well, consultation with OEH and NPWS would be fundamental to resolve issues associated with increased recreational access to the National Park.

#### 6.3.5 Financial arrangements

The Planning Proposal does not have merit with regards to proposed financial arrangements for infrastructure provision because:

- Council does not support the proposed Voluntary Planning Agreement which outlines funding arrangements for infrastructure provision (see below).
- Council would incur ongoing costs for the maintenance of the Public Park, including costs in managing this area as an Asset Protection Zone
- Council's S94A Plan 2017 would not capture adequate funds to meet increased demands, as it caters for 'infill' development within established urban areas (i.e. not land release areas requiring new and additional infrastructure).

Should the proposal proceed, Council would need to secure appropriate development contributions to provide adequate infrastructure (including sporting infrastructure) for the increase in population.

### 7. VOLUNTARY PLANNING AGREEMENT (VPA) PROPOSAL

Since June 2015, the Proponent has submitted a number of draft VPAs to Council, none of which were supported by Council's Senior Management. The Proponent was advised in writing on each occasion and encouraged to enter discussions with Council. Council's most recent correspondence of the 30 December 2016, stated Council's view that the proposed VPA does not deliver a positive planning outcome for the Northern Beaches community.

The Proponent submitted a revised Planning Proposal and draft VPA on 28 April 2017, with minor changes to previous versions. In the absence of agreement, Council and the Proponent decided to publicly exhibit the draft VPA with the Planning Proposal and report the matter back to Council following submissions. Council's exhibition material noted Council had not yet formed a view whether to enter into the planning agreement.

The draft VPA proposed the following public benefits:

- **Biodiversity Certification:** implementation of an agreement for the ongoing preservation on the proposed 119 ha offset land area (i.e. the E3 Environmental Management Area)
- **Community facility contribution:** a \$100,000 contribution for a local community facility

- **MLALC Services and Land Management:**
  - Engagement of an Ecological and Cultural officer for Waratah Park for 5 years
  - Funding of upgrades to Waratah Park
  - Funding of Aboriginal housing, employment, training and health services within the Greater Sydney area
  - Establishment of an Aboriginal Youth Foundation within the Greater Sydney area
- **Water Management Facilities**
- **APZ Management**
- **Public Park:** a new 3000sqm public park and outdoor gym to be dedicated to Council
- **Recreational Infrastructure**, including:
  - Upgraded walking trails to National Park
  - Public access to new Warringah Aboriginal Nature Reserve including insurance and interpretive signage
  - New public nature run
- **Traffic and Transport Infrastructure**, including:
  - Improved traffic treatment at Forest Way / Ralston Ave Belrose
  - New internal roads and footpaths
  - Upgrades to external roads and footpaths
  - Provision of 4 new bus shelters (locations unknown)

The draft VPA was placed on public exhibition with the Updated Planning Proposal from 26 May to 25 June 2017. A total of 243 submissions were received from the community. Of these, around 85 submissions (35%) referred to the VPA. Those who mentioned the VPA included those who referenced 'public benefits' and those who expressed a desired outcome if the proposal were to proceed.

Council also received feedback on the draft VPA from TfNSW, RMS and OEH (see Attachment 2 Public Authority and Utility Responses).

Council undertook an assessment with reference to Warringah Council Policy No. PL 600 VPA Voluntary Planning Agreements (VPA Policy) and consideration of community and public authority feedback. Based on that assessment, Council does not support the draft VPA for the following reasons:

- The proposed Biodiversity Certification agreement cannot be included in the VPA as advised by OEH. It is not a public benefit as it is required to offset the impacts of the proposal.
- The proposed community facility contribution is insufficient to support the additional increase in population. Note that Council's S94A Plan 2017 would not capture adequate funds for this proposal as it caters for 'infill' development in established urban areas.
- There is insufficient detail to determine public benefits of the proposed Aboriginal services and MLALC land management proposals. Funding for these services could be provided by the Proponent outside a VPA process.

- Most of the proposed public benefits would benefit the future occupants rather than the wider community and could alternatively be provided as conditions of a future development consent (e.g. water management facilities, traffic and transport infrastructure, APZ management)
- The proposed park is in an unsuitable location and would place an unreasonable maintenance burden to Council due to APZ management requirements.
- NPWS does not support the proposed increased access to Garigal National Park as consultation has not occurred and the associated impacts have not been addressed.
- Many public submissions do not consider the proposed public benefits adequately compensate for the loss of bushland.

The Proponent has previously advised Council that MLALC is under no obligation to make any VPA offer to Council. Whilst this is correct, the Proponent's Social Impact Assessment (SIA) recommends the Proponent enter into discussions with Council to determine the most appropriate means to address the additional demand for community infrastructure generated by the proposed development. To date, the Proponent has not taken into consideration any of Council's feedback.

Furthermore, Council staff's initial recommendation for approval in December 2013 included the preparation of a draft VPA. The Department and JRPP supported a Gateway Determination based on Council's Assessment.

In this instance, Council does not support the draft VPA as it does not deliver a demonstrable public benefit. As outlined in Council's VPA Policy, Council has the discretion not to enter into a VPA in these circumstances.

Feedback on the draft VPA including suggested public benefits can be viewed in Attachment 5.

## 8. PUBLIC AUTHORITY AND UTILITY PROVIDER RESPONSES

Council and the Proponent undertook extensive pre-exhibition consultation in accordance with the Gateway Determination with the RFS, OEH, TfNSW and RMS. The Updated Planning Proposal and VPA were referred to these authorities as well as TransGrid, Ausgrid and Sydney Water.

Responses from public authorities and utility providers are discussed in the above assessment and summarised in Attachment 2. In summary:

- **Office of Environmental Heritage:** Substantial issues previously raised by OEH have not been satisfactorily addressed. OEH has significant concerns regarding the proposal and does not support it in its current form.
- **National Parks and Wildlife Services:** NPWS has not been consulted by the Proponent on this proposal and raise significant issues in regard to the on-going protection and management of the adjacent Garigal National Park. NPWS does not support the proposal and recommends that it not progress.
- **Rural Fire Service:** RFS considers the revised submission and minor plan modifications do not adequately address the issues previously raised, and do not significantly reduce the bush fire risk to potential future residents. The RFS does not support the proposal and consider that the Planning Proposal should not proceed in its current form
- **Transport for NSW:** TfNSW provide recommendations for the delivery of bus capable roads, including an amendment to the draft VPA and conditions for approval of the subdivision application.

- **Roads and Maritime Services:** RMS raises no objection to the proposal however its support is contingent on Council entering into a VPA for the proposed seagull treatment at Ralston Ave / Forest Way intersection.
- **Sydney Water:** Confirm there is adequate capacity to supply water and wastewater services to the site.
- **Ausgrid:** Consents to the development subject to conditions. However, the outcomes of Council's Strategic Bushfire Review demonstrate it is unlikely the Proponent can meet conditions requiring at least one evacuation path under all reasonably expected incidents.
- **TransGrid:** TransGrid objects to the rezoning of the subject site for residential development as it would pose an unacceptable risk to TransGrid's infrastructure and the safety of the public.

## 9. NOTICE OF DEMAND AND INTENTION TO COMMENCE PROCEEDINGS

By letter dated 16 November 2017, Council received a Notice of Demand and Intention to Commence Proceedings (the Notice) from solicitors representing the Proponent (Dentons) requiring Council to refrain from taking any action under s58 or s59 of the *Environmental Planning and Assessment Act 1979* to make a decision on the Updated Planning Proposal and to support the Proponent's application that Council be replaced as the Relevant Planning Authority for the Updated Planning Proposal on grounds that Council:

- A. has abused its power as the Relevant Planning Authority
- B. has denied procedural fairness to MLALC
- C. has contrived with others to create disingenuous reasons to justify a predetermined conclusion based on bias and an ulterior purpose
- D. engaged a former employee of the RFS to improperly influence the RFS
- E. has caused substantial delay in the assessment process, incurring substantial additional costs
- F. has acted outside the terms of the Gateway Determination issued by the Department
- G. has demonstrated a lack of transparency, particularly with its dealings with the RFS
- H. has acted in contravention of its obligations under the *Local Government Act 1993* and the Model Code of Conduct for Local Councils.

Council rejects these assertions as a self-serving misrepresentation of the assessment process. In response to the above allegations the following is provided:

- The Proponent wrongly asserts that the issue of a Gateway is "meritorious to proceed to the drafting of the amendments to the LEP". The DP&E Guide to Preparing LEPs (August 2016 – pg 15), clearly states that "*Not all planning proposals that have received a Gateway determination will be finalised*", for example if "*the proposed change of planning controls is not supported following consideration of studies, agency input or consultation*". This was the case in this assessment.
- Council has kept meticulous records of the events since the Planning Proposal was lodged in April 2013. A review of the timelines has revealed:
  - The majority of time taken was due to the preparation and submission of additional information by the Proponent and the need to seek further comment from Public Authorities in response (Figure 8). The Gateway Determination allowed the Proponent to respond to public authority comments.

- Pre-exhibition consultation with public authorities took the longest amount of time due to the above (48% - Figure 9).
- The next longest stage of the assessment was due to the Pre-Gateway Review undertaken by the Department which took almost 1 year (20% - Figure 9)
- Council has shown no bias or 'ulterior purpose' in assessing this Proposal and had no predetermined opposition to the proposal, as demonstrated by:
  - Council staff's 2013 recommendation that the proposal proceeds to a Gateway Determination.
  - In 2013 Council resolved via split vote (6-4) to reject the Planning Proposal.
  - The post-gateway public exhibition material produced by Council which was objective in nature and accepted by the Proponent prior to publication.
  - A lack of evidence demonstrating Council officers were opposed to the planning proposal, communicated with Councillors' or were directed in any way by senior staff to reach a defined outcome.
- The Proponent's allegation of bias is largely attributed to Council's engagement a Bushfire consultant (Blackash) whose Peer Review highlighted significant bushfire concerns. The Proponent alleges that Blackash was "*secretly retained*" by Council to "*prepare a report that would justify a rejection of the MLALC Proposal on the basis of Bushfire risk and to make representations to the RFS to persuade it to change its stated position from non-opposition to that of opposition to the MLALC Proposal*". In response:
  - Blackash Consulting was engaged by Council as an independent expert to assist Council's environmental assessment. Blackash was an obvious candidate having previously worked with Council on various development appeals. Blackash were not engaged due to their connections with the RFS.
  - Council regularly engages consultants to assist with the assessment process, similar to an internal referral to an expert in-house. There is no requirement to make the outcome of that referral public or release it to the Proponent prior to the finalisation of Council's assessment.
  - Blackash were procured in accordance with Council's Procurement Policy.
  - Blackash's view was that RFS should reconsider their position and this was presented to RFS. As required by the Gateway determination, Council as the Relevant Planning Authority is required to take into account any comments made by RFS prior to undertaking community consultation.

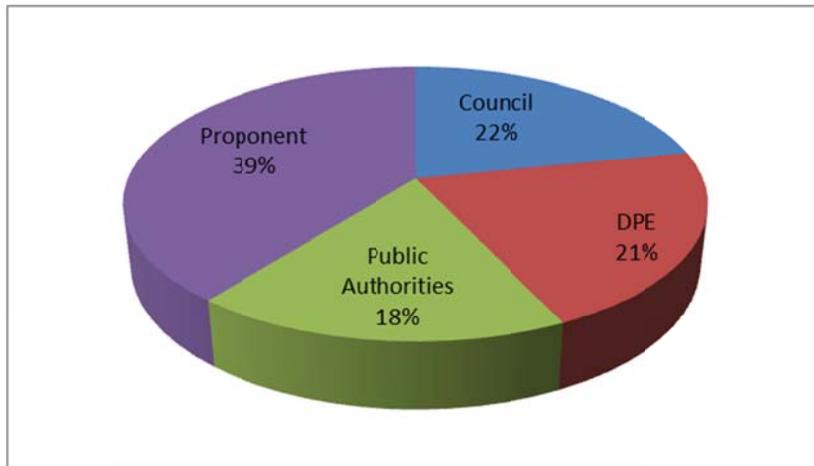


Figure 8 – Time taken by various stakeholders in progressing the Planning Proposal, since the original proposal was lodged with Council April 2013 until 19 December 2017. DPE is the Department of Planning and Environment.

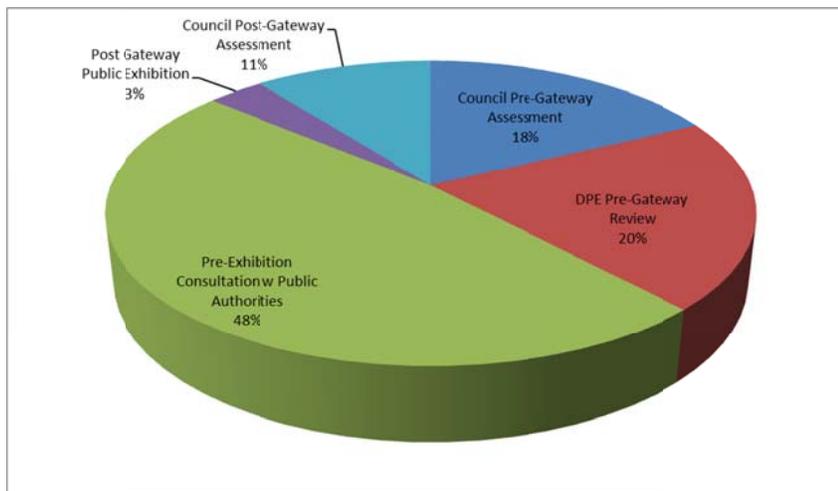


Figure 9 – Time taken in the various stages of the Planning Proposal, since the Planning Proposal was lodged with Council April 2013 until 19 December 2017

### FINANCIAL CONSIDERATIONS

Rejecting the Planning Proposal will have no financial impact to Council. Should the Planning Proposal proceed in its current form, financial impacts to Council could include:

- Ongoing maintenance costs from the proposed Public Park, including costs in managing this area as an Asset Protection Zone;
- Costs for the provision of additional infrastructure to meet the demands arising from the development, unless Council can secure an appropriate Voluntary Planning Agreement.

### SOCIAL CONSIDERATIONS

The Planning Proposal would result in positive outcomes for the Aboriginal Community as it would facilitate the ability of MLALC to derive economic use of Aboriginal land acquired under the *Aboriginal Lands Rights Act 1983*. The VPA also proposes funding of Aboriginal housing,

employment, training, youth and health services within the Greater Sydney area. However, the Planning Proposal and VPA are not the only means of achieving these outcomes.

An increase in housing supply can also bring social and economic benefits, however not when the proposed development is inconsistent with local and state policies as demonstrated in Council's assessment.

Council considers the overriding social and economic considerations in determining this proposal should be the protection of human life and property. Both the RFS and Council's Bushfire Consultant conclude that the risk to life and property from this proposal is unacceptable and that this rezoning should not proceed in its current form.

If the proposal were to proceed, the negative social and economic impacts of the proposal would also include:

- Bush fire management challenges for fire agencies, insurers, local and state governments, residents and affected communities (directly and indirectly)
- Adverse impacts to the safety and security of Sydney's electricity supply
- Loss of bushland highly valued for recreation by residents and visitors to the area
- Change to character and ambience of the neighbourhood described as quiet, leafy, relaxed, peaceful, as having a 'bush feel' or 'rural nature' and as being family friendly and safe for children and the elderly
- Electric & magnetic field (EMF) exposure impacts to health (perceived or otherwise)
- Safety and security issues associated with the location of the park at the periphery of the site with little casual surveillance
- Visual impacts especially in context of being a ridgeline development
- Impacts on human health due to increased hazard burns
- Increased pressure on social infrastructure such as sports fields.

Council does not support the Proponent's public benefits put forward in the draft VPA submitted with the Planning Proposal.

## **ENVIRONMENTAL CONSIDERATIONS**

If the Planning Proposal were to proceed in its current form, it would likely result in significant environmental impacts as discussed in this report.