



Office of
Environment
& Heritage

DOC17/305111-36
2016/019020

Mr Neil Cocks
Manager Strategic Planning
Northern Beaches Council
council@northernbeaches.nsw.gov.au

Attention: Ms Suzy Lawrence, Senior Strategic Planner

Dear Mr Cocks

I refer to correspondence to the Office of Environment and Heritage (OEH) inviting comment on a Planning Proposal for a site at Ralston Avenue Belrose (Lot 1 DP 1139826). The Planning Proposal seeks to amend the Warringah Local Environmental Plan 2011 (WLEP 2011) to rezone 136.62 hectares of land to R2 Low Density Residential – 17.27 hectares (12.6 % of the site), RE1 Public Recreation – 0.3 hectares (0.2% of the site) and E3 Environmental Management – 119.05 hectares (87.2 % of the site) with a predicted yield of 156 lots based on a minimum lot size of 600 square metres.

OEH was consulted at pre Gateway stage in 2015, however the substantial issues raised by OEH at that time have not been satisfactorily addressed. Rather than reiterate all the previous advice, OEH has limited its comments to the assessment process and the higher level issues in this response.

The documents supporting this Planning Proposal reference biodiversity certification however the proponent has been unable to secure the support of a planning authority as the applicant for biodiversity certification as required under the current legislation. Although it is acknowledged a draft Biodiversity Certification Strategy has been prepared under the Biodiversity Certification Assessment Methodology (BCAM), OEH is unable to comment on the adequacy of this draft strategy and the associated conservation measures as it has not been updated to reflect the current proposal and does not form part of the exhibition package.

Should biodiversity certification be pursued, the strategy would need to be updated to reflect the current proposal, including bushfire protection measures. In the absence of an updated Biodiversity Certification Strategy and an application from a planning authority, the benefits of an assessment under BCAM cannot be assumed or supported by OEH. Therefore, OEH is of the view the significant biodiversity impacts have not been satisfactorily addressed.

In brief, OEH has the following major concerns with the current proposal:

- Approximately 30 hectares of native vegetation is to be cleared, plus a further area for bushfire asset protection will be substantially modified
- The extent of clearing will result in significant impacts on threatened species and their habitat. These species are the Eastern Pygmy Possum, Red-crowned Toadlet, Giant Burrowing Frog, Rosenberg's Goanna, *Grevillea caleyi* and *Tetratheca glandulosa*
- The clearing will result in impacts on ROTAP species (*Eucalyptus luehmanniana* and *Angophora crassifolia*)
- The strategy for compensating for loss of biodiversity and proposed conservation measures (i.e. as proposed under biodiversity certification) remains unclear, despite references to possible biobanking of land and transfer of lands to the OEH estate or co-management of the land. The Biodiversity Certification Strategy is not up to date and it does not form part of the exhibition package
- OEH has not been consulted about the possible transfer of lands or co-management and no agreement has been reached
- Aboriginal cultural heritage issues identified in previous advice have not been adequately addressed
- Adjoining park issues (Garigal National Park) have not been addressed including unauthorised access into the park and bushfire management.

In summary, OEH has significant concerns regarding this proposal and cannot support it in its current form. OEH continues to support a biodiversity certification approach for this proposal to satisfactorily address the biodiversity issues in a strategic and systematic way. It is recommended that if biodiversity certification is to be pursued the most immediate issue requiring resolution is determining who will be the applicant for the biodiversity certification application, noting that under the current system this must be a relevant planning authority.

Further comments on this proposal are provided in Attachment 1.

OEH appreciates the extension of time for providing this advice. If you require any further information or clarification please contact me on 9995 6864 or by email at susan.harrison@environment.nsw.gov.au.

Yours sincerely

S. Harrison 26/06/17

SUSAN HARRISON
Senior Team Leader, Planner
Greater Sydney

ATTACHMENT 1

Office of Environment and Heritage (OEH) comments on a Planning Proposal for Ralston Avenue Belrose (Lot 1 DP 1139826)

1.0 Background

The land subject to this planning proposal is densely vegetated and surrounded on three sides by Garigal National Park (NP). It supports significant biodiversity values and provides an important buffer to the NP. The Office of Environment and Heritage (OEH) has had a long history with this proposal. Although OEH (including the National Parks and Wildlife Service or NPWS) was not included in initial consultation of the draft planning proposal when it was exhibited under a preliminary (non-statutory) community consultation process in 2013, OEH has provided comments and advice to Warringah Council (and now Northern Beaches Council) on this proposal.

In 2013, Warringah Council voted not to proceed with the application however this decision was challenged by the proponent, the Metropolitan Local Aboriginal Land Council (MLALC). The Department of Planning and Environment (DPE) undertook a Pre-Gateway review and recommended the proposal be reviewed by the Sydney East Joint Regional Planning Panel (JRPP). The JRPP, supported by advice from DPE, recommended the proposal proceed to Gateway with conditions that included changing the zoning for the retained bushland to E3 Environmental Management. In making this decision the JRPP noted that resolution of impacts on threatened species and managing the potential risks of bushfire would be deferred to development assessment stage.

OEH was invited by Council to comment on a revised planning proposal in 2015 prior to its public exhibition. OEH provided detailed correspondence (dated 27/02/2015) that raised concerns regarding impacts on threatened species, endangered ecological communities, bushfire, the adjoining NP and Aboriginal cultural heritage issues. Although the reports provided on this revised planning proposal contain more information, in particular on bushfire and ecology, the footprint of the proposal has remained largely the same.

2.0 Biodiversity certification

In 2013, OEH recommended a biodiversity certification approach to assess and address impacts on threatened species, populations and ecological communities at the strategic planning stage. MLALC decided to progress a biodiversity certification application and commissioned the *Biodiversity Certification Assessment and Biocertification Strategy* (EcoLogical January 2016) (BCA & BS) prepared in accordance with the Biodiversity Certification Assessment Methodology (BCAM). However, this has not progressed as Council is unwilling to be the applicant for a biodiversity certification proposal. Under the current scheme an applicant must be a planning authority. The Department of Planning and Environment (DPE) may consider being the applicant for this proposal.

OEH notes under the new *Biodiversity Conservation Act 2016*, a biodiversity certification application may be made by all the owners of the land proposed for biodiversity certification or by any other person with approval in writing of all those owners. However, the assessment method will be different (i.e. Biodiversity Assessment Method or BAM) and the operational arrangements are still being developed.

At this stage, OEH has not been asked to consider a biodiversity certification application and the BCA & BS does not form part of the exhibition package. OEH therefore cannot comment on the adequacy of the conservation measures or compliance with the BCAM. It is noted however that the Ecological Assessment (EA) (Travers 2017) states that the BCA & BS will need to be updated to reflect additional impacts on each vegetation type for APZ purposes, and their surrogate threatened species habitat. It is likely that conservation of the E3 area alone would be inadequate to achieve certification of the developable land and that additional conservation measures, such as creation or purchase of ecosystem and species credits off-site, would have to be undertaken.

The reports prepared on behalf of MLALC state that it is intended that the site be biobanked, or transferred to OEH estate or co-managed by OEH and MLALC. However, OEH has not been consulted on any transfer of lands or other arrangements. The draft Voluntary Planning Agreement does not contain any proposed arrangements for biobanking or dedicating the land to national park. OEH retains the concerns previously expressed regarding the ability to ensure that proposed conservation measures can be guaranteed if a biodiversity certification proposal is not part of the exhibition package for a planning proposal.

3.0 Biodiversity

The planning proposal package includes an updated Bushfire Protection Assessment (Travers April 2017), Fuel Management Plan (Travers April 2017) and Ecological Assessment (Travers April 2017). OEH acknowledges that there are several specialist reports (Rosenberg's Goanna, Red-crowned Toadlet, Giant Burrowing Frog, Eastern Pygmy Possum) that support this application. However, these documents have been specifically prepared in support of red flag variations for a biodiversity certification proposal. As the proposal cannot rely on biodiversity certification for addressing the biodiversity impacts the status of these documents is difficult to determine.

Chapter 6 of the EA suggests that the *"adequacy of offsets is in part determined through the use of the maintain or improve test using the BCAM or BBAM methodologies and in the case of the EPBC listed matters in accordance with the EPBC Act biodiversity offset policy and biodiversity offset associated calculator as provided by the Department of Environment."* The report lists the principles for use of biodiversity offsets but does not address them. It states the proponent's current preferred method of protection is under a biodiversity certification agreement and establishing the offset lands as a biobank site, however there is no certainty around this measure, OEH has not been consulted and the potential credit values of a proposed biobank site have not been assessed.

4.0 Asset Protection Zones and Bushfire Protection

OEH understands that bushfire protection measures have not been resolved and further discussion are planned between the Rural Fire Service and Council. A large part of the site is required to be managed as asset protection zones (APZs) and strategic fire advantage zones (SFAZs) to protect the proposed residential area from bushfire. The types of tactics to be employed in APZs include frequent burning and/or underscrubbing, herbicide application, watering, trail construction and radiation shield construction, all of which are likely to be incompatible with conservation of biodiversity of high value. Appendix C of the Fuel Management Plan (Figure 6) indicates extensive impacts on Red-crowned Toadlet, Eastern Pygmy Possum and Rosenberg's Goanna habitat; in particular, the majority of a large area of "Rosenberg's Goanna critical habitat" is identified as being affected by APZs and SFAZs.

The Bushfire Protection Assessment of the planning proposal clearly shows that the majority (10.15 of 17.97 hectares) of the proposed APZs are within E3 zoned land. It is unclear whether these parts of the E3 zone are to be included as land proposed for biodiversity conservation (offset) measures, however, use of them for such a purpose would be inconsistent with the BCAM which requires that areas of bushfire risk requiring asset protection zones must be within the developable area.

As parts of the terrain are extremely steep and rocky OEH is concerned about the impacts of intensive fuel management measures within an APZ could have on erosion and weed management, particularly in affecting the adjoining conservation areas and Garigal NP. OEH is also concerned that there may be increased resourcing required for bushfire asset protection within Garigal NP because of proposed residential lots in this location.

5.0 Adjoining park issues

5.1 Consultation

NPWS has not been consulted by the proponent on this proposal and there are some significant issues in regard to the on-going protection and management of the adjacent Garigal NP including access issues, bushfire management and the impact of domestic animals on native flora and fauna.

No advice has been sought regarding a possible transfer of lands or co-management of the E3 lands despite statements in the reports that this is proposed. Early engagement and consultation with NPWS would have enabled the issues to be addressed and is strongly recommended before this proposal progresses.

5.2 Heath Trail

References in the supporting documents to the Heath Track being a designated walking track are not correct. The Heath Trail is a fire management access track only.

It appears this misinformation may have originated in the *Warringah Regional Multiple Use Trail Strategy* (Warringah Council 2007) and has unfortunately been the basis of statements and recommendations in subsequent documents, including the *Proposed Residential Development Belrose NSW - Open Space and Recreation Study* (Gondwana Consulting Pty Ltd 2012).

NPWS does not support informal access trails into the NP from the site, including any access via the Heath Trail.

5.3 Increased access to Garigal NP and other adjoining park impacts

The proposal to formalise and utilise the current proliferation of illegal mountain bike (MTB) tracks in the area for MTB riding, walking and access to Garigal NP is of significant concern to NPWS as illegal tracks have been established without planning or authorisation and have associated significant erosion issues and impacts on threatened species.

The proposal also does not address the fact that NPWS does not want additional access to the NP due to fire, pest, illegal activities, and other management considerations (including increased domestic pets entering the NP and impacts on wildlife) as previously advised.

Reference should be made to the *Guidelines for developments adjoining OEH land and water* (see <http://www.environment.nsw.gov.au/protectedareas/developmentadjoiningdecc.htm>). The documents mention some on site retention but do not address the impact of overflows or other stormwater impacts on the NP. Discharge of stormwater into a NP is not a permissible use.

The supporting documents do not identify the additional issues for NP management including but not limited to the potential very large increase in impacts on the NP visitors, fauna (including threatened species) and NP management (including fox baiting) of domestic pets, particularly dogs and cats. The effect of stormwater discharge into the NP is a significant issue that has not been considered. This could also have impacts on fauna species such as the threatened Red-crowned Toadlet and Giant Burrowing Frog.

The EA recommends that cats be banned from the development however this is likely to be difficult to implement or enforce. Although the Land and Environment Court recently dismissed an appeal against a prohibition on keeping dogs on land in a subdivision (i.e. Bibbenluke in Duffys Forest) there would expected resistance from future property owners and resourcing issues for council to enforce such a prohibition. Further advice from the proponent about how this recommendation could be delivered is required.

As consultation has not occurred and these issues have not been addressed, NPWS advises that it does not support the proposal and recommends that it not progress. As mentioned above, consultation is strongly recommended before further consideration of this proposal.

6. Aboriginal Cultural Heritage

OEH notes that the document *Aboriginal Archaeological Due Diligence Assessment* prepared by Dominic Steele Consulting Archaeology (December 2012) provided to consider the Aboriginal Cultural heritage values and impacts of the proposed subdivision is a due diligence assessment. Please note that the due diligence process is not sufficient to support a planning proposal. Due diligence is a legal defence against harm under the *National Parks and Wildlife Act 1974*; accordingly, OEH does not review or comment on the due diligence process undertaken by

proponents. Furthermore, OEH considers that a due diligence process is inadequate to assess the impacts of this proposal on the Aboriginal archaeological and cultural heritage values of the subject land.

OEH recommends that Council require an Aboriginal cultural heritage assessment be prepared to appropriately assess the Aboriginal cultural heritage values of the subject land. This assessment should be prepared in accordance with OEH Guideline *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (2010) in addition to the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010). This would ensure that the proposed subdivision clearly considers the implications of future residential development and how this may affect any Aboriginal cultural heritage values present within this land.

(END OF SUBMISSION)