

Our Ref: 12138

1 August 2013

Director General
Department of Planning and Infrastructure

By email

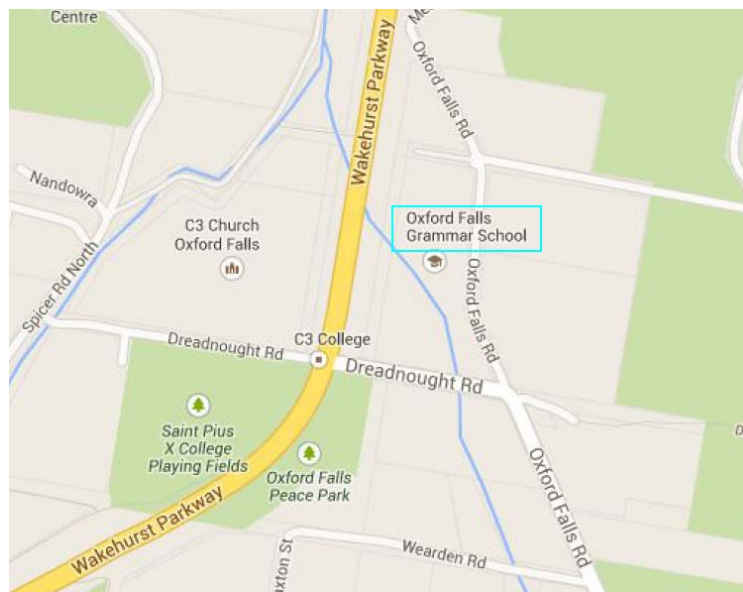
Dear Sir,

Re: Draft Oxford Falls Valley and Belrose North Strategic Review

We act on behalf of Oxford Falls Grammar School located at 1078 Oxford Falls Road, Oxford Falls. We have been requested to review the relevant documentation and provide planning advice. Our conclusion following this review is that the proposed zoning changes have an adverse impact on the school and are contrary to the relevant guidelines for rezoning. The reasons for this conclusion are outlined below.

Site

The subject property is known as 1078 Oxford Falls Road, Oxford Falls. It is described as Lot 1 DP 1046451 and has a total area of around 3.5Ha. It is located on the western side of Wakehurst Parkway and is also bound by Oxford Falls Road and Dreadnought Street (see **Figure 1 – Location** and **Figure 2 – Site**).



Source – Google maps

Figure 1 - Location

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Source – Department of Lands

Figure 2 - Site

Background

The proposed zoning for the school in the Strategic Review is E3 Environmental Management. This is the zoning that is intended to apply to the majority of the area subject of the Review. However, the methodology of how the Review concludes that this is the appropriate zoning for the subject land appears flawed.

The first stage of determining the appropriate zone was Primary Constraints mapping. As indicated in **Figure 3** below, the site is nominated as having 'moderate' constraints (with the exception of the existing creek running through the site).

The only less constrained land is land having no constraints. All areas with a higher level of constraints were considered appropriate for an E3 zoning as this meant they were consistent with the objectives of this zone. The remaining less constrained lands were subject of further review. Land which were considered to be isolated or subject to secondary constraints were also nominated as being appropriate for an E3 zoning. Sites with existing Physical and Human Infrastructure (including Oxford Falls Grammar School), were the subject of more specific consideration. The matters that are noted as being part of this consideration were:

- Relevant planning legislation, studies, policies and guidelines;
- The broader strategic context;

- How and why other land was zoned to underpin LEP 2011;
- Consideration of key planning issues as outlined in Section 3.5 of this report;
- Existing information on environmental constraints and infrastructure provision on the subject and surrounding land;
- Whether the site adjoins an urban area and/or environmentally sensitive land;
- Verification of information via site visits and consideration of stakeholder submissions to date;
- The existing and desired future character of the area;
- Determination of best fit zoned and planning controls based on controls under LEP 2000.

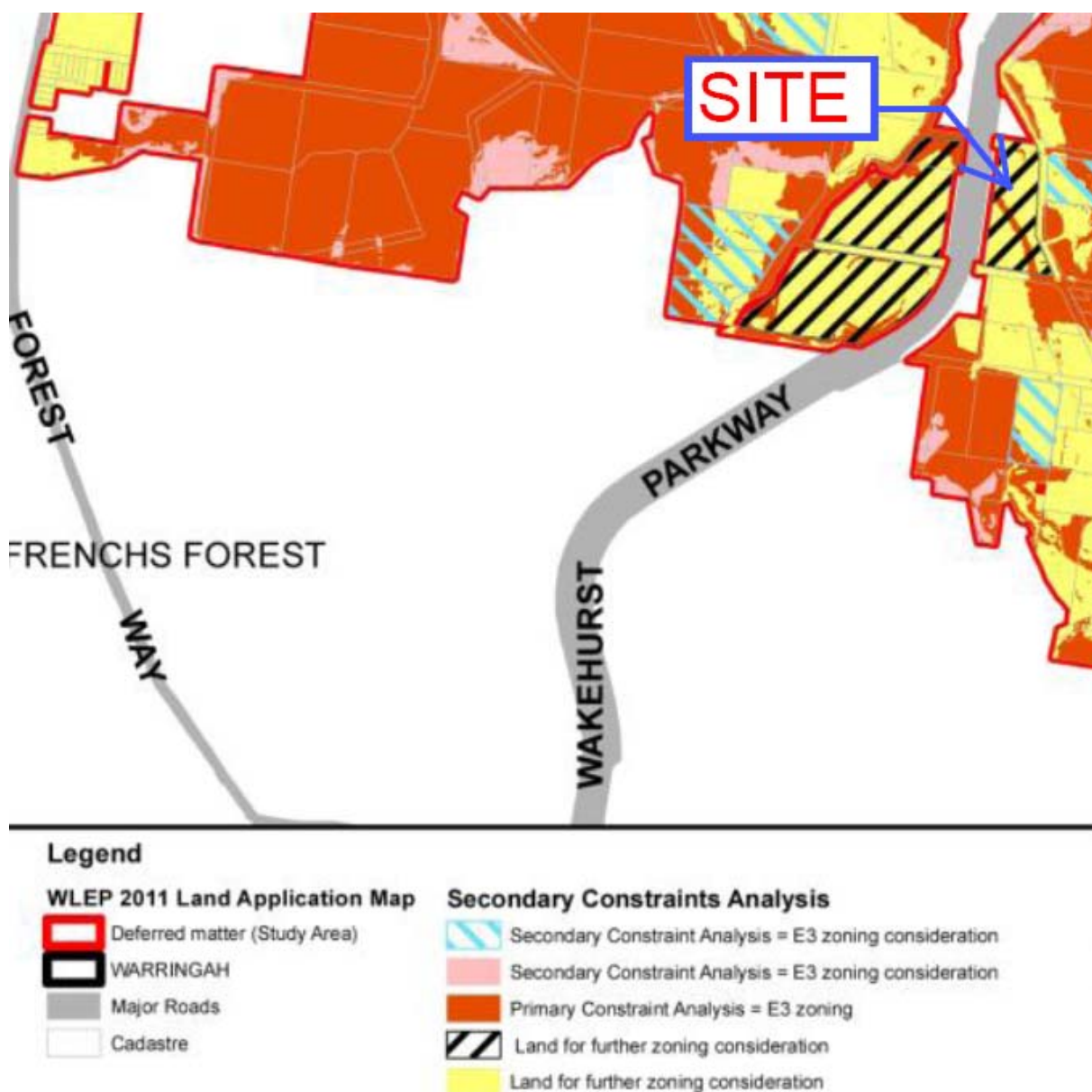


Figure 3 – Secondary Constraints Map
Oxford Falls Valley and Belrose North Strategic Review



However there is no detailed information about these matters in relation to specific sites and no explanation as to how it was concluded that the E3 zone was determined to be the most appropriate zone. The problem with educational establishments being prohibited in the E3 zone is simply dismissed by reference to the Infrastructure SEPP which permits such uses despite prohibition in an LEP (see discussion below). However, it is noted that the same approach was not undertaken in relation to existing telecommunications facilities which are also permissible under this SEPP but are recommended for an SP2 zoning. This is highly inconsistent.

The E3 Zone

The proposed E3 zoning is considered inappropriate for the subject land for the following reasons.

The objectives of the E3 zone are as follows:

“Zone E3 Environmental Management

1 Objectives of zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*
- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*
- *To protect and enhance visual quality by promoting dense bushland buffers adjacent to major traffic thoroughfares.”*

Large scale development such as a school is likely to be incompatible with these objectives and as such, uses such as educational establishments are prohibited within this zone. In this circumstance, an educational establishment (were it not for SEPP Infrastructure) would be an ‘existing use’ which is subject to specific provisions of the Environmental Planning and Assessment Act 1979 (‘the EP&A Act’). The overall intent of such a situation is that in the longer term the use of the land will conform with the zoning of the land (ie the existing use will cease). However in this case it is highly unlikely that the school use would cease and the land revert to a use consistent with the E3 zoning.

Another aspect to the consideration of the appropriateness of the E3 zoning is the existing character of the site. In this regard the land is cleared and it is unlikely that this would change. Therefore the existing character of the land is different from the majority of the land that is proposed to be zoned E3 and it has no ‘*special ecological, scientific, cultural or aesthetic value*’. This was acknowledged in the Strategic Review and for this reason, such land was not automatically designated E3.



Planning Circular 09-002 deals specifically with Environmental Protection Zones and in relation to the E3 zone states:

E3 Environmental Management

This zone is for land where there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.

As noted above, the subject site does not have these attributes and this is not likely to change. This is supported by the Strategic Review constraints mapping which indicates that the site generally has moderate constraints to development (the next level up from having no constraints). Circular 09-002 also says:

“Where the primary focus is not the conservation and/or management of environmental values, a different zone type should be applied.”

This circumstance applies here, where the focus is not environmental but ensuring that an important piece of social infrastructure is maintained and supported.

SEPP Infrastructure

It is noted that as the proposed use is an educational establishment, regardless of the prohibition that would result from the E3 zoning, it would remain permissible under State Environmental Planning Policy (Infrastructure) 2007 ('SEPP Infrastructure'). This seems to be the only justification put forward in the Review as to why the E3 zone is appropriate. However this does not change the fundamental conflict between the existing use and the intended zoning of the land. Such an outcome is contrary with one of the main principles of the new 'Template LEP' process – that the zoning of the land should reflect its use and that there should not be any special provisions that permit the use. This is even more relevant given that the E3 zone is not a 'prescribed zone' for educational establishments in SEPP Infrastructure. The SEPP will only make the school a permissible use because it already exists. This is not dissimilar to treating the school as a 'existing use' and subjecting it to the typically restrictive assessment process that applies in such cases.

Special Purposes (SP) zoning

The Department of Planning and Infrastructure (DP&I) has specific guidelines for the zoning of infrastructure uses in LEP's – Practice Note P10-001. Principle 1 relates to the zoning for infrastructure that is permitted on all land, however this does not apply to educational establishments. Principle 2 relates to zoning for infrastructure that is permitted only in 'prescribed zones'. This is the case with educational establishments, however the proposed E3 zoning is not a 'prescribed zone' and there are no prescribed zones adjacent to the site. Principle 3 applies where certain special purpose zones should remain as special purpose zones. Whilst the existing zoning of the land is not special uses, this is primarily because Warringah LEP 2000 did not zone land. The previous zoning under Warringah LEP 1985 was either Special Uses or at least a zone where the use was permissible. In this circumstance, Principle 3.1 should apply – *“where the land use is unlikely to change, and where the use is not otherwise covered in this practice note, land may be zoned SP2 Infrastructure.”*



As there are no adjoining zones or any other zones which would be appropriate, it is considered that the most appropriate zoning of the land is SP2 Infrastructure. This acknowledges the existing and likely future use of the land, in a manner consistent with the principles for zoning under Template LEP's. Further, it is noted that there are a number of other school and other 'special uses' adjoining or adjacent to the site. One of these, the C3 Church, is proposed to be acknowledged as an 'additional use' and identified on the relevant LEP map. Again this is not the approach favoured by DP&I as the main objective is to zone land appropriately without the need for special provisions. A Special Use zoning would be more appropriate. Also, as noted above, other infrastructure (telecommunications facilities) which are also permissible under SEPP Infrastructure, are proposed to be zoned SP2. The same approach should be adopted for the subject site.

Traditionally non-urban areas in LGA's such as Warringah have accommodated uses which require large areas and are generally not feasible within urban zones. The existing school and church uses clustered in this location are reflective of this tradition. It is likely that this type of demand will continue into the future and as such land needs to be zoned to accommodate this need. Therefore the proposed prohibition of such uses is questioned and the 'greater good' provided by such uses to the wider community need to be balanced against the potential impacts in a particular area. If these uses are not going to be permitted in the E3 zone, an appropriate compromise may be to zone an area focussed on the existing cluster of 'special uses' to allow for their expansion and for new uses to be established. As noted above, the appropriate zoning is one or more 'SP' zones.

Other alternatives

It is noted that the Strategic Review indicates that under LEP 2011 all schools in non-urban areas have been zoned either RU4 Primary Production Small Lots or E3. It is noted that RU4 is a 'prescribed zone' under SEPP Infrastructure so if the above request for an SP2 zoning is not adopted, an RU4 zoning would be more appropriate than E3, as at least the SEPP acknowledges that a school should be treated as a permissible use within this zone.



Conclusion

It is considered that the methodology for determining that the zoning of the Oxford Falls Grammar School land as E3 is flawed and no specific justification has been provided. The fact that a school use will remain permissible under SEPP Infrastructure is not adequate justification, particularly when this is also the case with telecommunications facilities, yet they are intended to be zoned SP2.

The process is meant to have been a Strategic Review, however there has been no discussion of the traditional use of non-urban land by 'special uses' nor how the demand for continued or additional services will be met if such uses are prohibited.

The ability to continue and to expand the existing school use needs to be protected and part of this process needs to be an appropriate zoning that supports this function, which is the primary planning consideration on this site. The Strategic Review notes that the site is generally free of environmental constraints and that the presence of existing physical and social infrastructure means it is different from other land. However, this has not been supported by zoning the land appropriately. Reliance on SEPP Infrastructure is not considered adequate as even under these provisions, the use is effectively an 'existing use'. This is not adequately supportive of a land use that is essential social infrastructure.

In our view an SP2 zoning would better reflect the existing use and support its continuation and potential growth. This zoning would be more consistent with the relevant DP&I guidelines for the zoning of land generally and more specifically in relation to environmental conservation and special purposes zoning.

If there are any further enquiries regarding the above please do not hesitate to contact the undersigned on 0409911868.

Yours faithfully

Brett Brown, Director