

7 August 2013

Director General  
Department of Planning and Infrastructure  
GPO Box 39,  
SYDNEY NSW 2001

Dear Sir,

**Draft Oxford Falls Valley and Belrose North Strategic Review  
Submission in Relation to 70 Willandra Road, Beacon Hill**

We are writing on behalf of Lipman Properties Pty Ltd, the owner of 70 Willandra Road, Beacon Hill (the 'site') to object to the zoning of the site proposed under the *Draft Oxford Falls Valley and Belrose North Strategic Review* (the Strategic Review). Specifically, we object to the proposed 'E3 Environmental Management' zoning of the site under the draft, and submit that the site should properly be included in the 'R2 Low Density Residential' zone.

**1 The Site**

The site is commonly known as 70 Willandra Road, Beacon Hill and is legally defined as Lot 806, DP 752038. It slopes down from west to east and comprises a series of naturally formed rock terraces. It also contains sandstone outcrops and trees interspersed amongst heath vegetation.

The site has an area of 2.6 hectares and is bounded by:

- Lady Penrhyn Drive and the suburb of Red Hill to the south and west;
- Willandra Road and the suburb of Beacon Hill to the east and;
- Lot 807 DP 752038 and Lot 808 DP 752038 to the north, which are both undeveloped, with topography and vegetation similar to the site.

A substantial brick and tile dwelling is situated at the north-west corner of the site, addressing Lady Penrhyn Drive. The curtilage of this dwelling above the adjacent escarpment, and a significant area below the escarpment has been almost entirely cleared of natural vegetation.

FIGURE 1 – AERIAL PHOTOGRAPH OF THE SITE



FIGURE 2 – EXISTING DWELLING HOUSE ON THE SITE





## 2 Development Approved on the Site

On 30 December 2010 the NSW Land & Environment Court (*Lipman Properties Pty Ltd v Warringah Council* Matter Nos. 10973 & 10974 of 2009) granted development consent for:

*“32 self contained dwellings for use as 'Housing for Older People Or People With A Disability', provided in a cluster of 8 detached buildings, each comprising four dwellings of 2 - 3 bedrooms”*

FIGURE 3 – COURT APPROVED TWO STOREY HOUSING



Notwithstanding Council's environmental constraints mapping, considered further below, and the identification of threatened *pimelia curviflora* sp. on the site, subject to various conditions the Court found that these constraints were suitably managed within the proposed development.

The Court granted 'deferred commencement' consent. The deferred commencement conditions were satisfied as confirmed by correspondence dated 13 March 2012 and the consent commenced on 13 March 2012.

Unless 'physically commenced', the consent will lapse on 13 March 2017.

### 3 The Strategic Review

The Strategic Review was jointly exhibited by the Department of Planning and Infrastructure (DPI) and Warringah Council (Council) from 21 June to 7 August 2013. Its purpose is to consider the development controls that currently apply to land under Warringah Local Environmental Plan (LEP) 2000 and recommend suitable land use zones for the area. Recommendations from the review will allow this land to be brought into Warringah LEP 2011.

Key references to the site are considered below.

#### 3.1 MAP 03 – LAND USES OBSERVED DURING SITE VISITS (MAP 003 - PAGE 24)

This map identifies the majority of land within the Strategic Review study area as being 'Bushland', but acknowledges some sites as 'Dwelling' and other as 'Seniors Housing and Associated Facilities' (including Willandra Village to the north of the site), in addition to a dozen other categories of existing use.

Notwithstanding the existing substantial dwelling on the site, and the current court approval for senior's housing development, the site is identified as 'Other'. That is, it is not recognised as 'Dwelling' or 'Seniors Housing and Associated Facilities'.

#### 3.2 ENVIRONMENTAL CONSTRAINTS MAPPING (MAP 004 – PAGE 29)

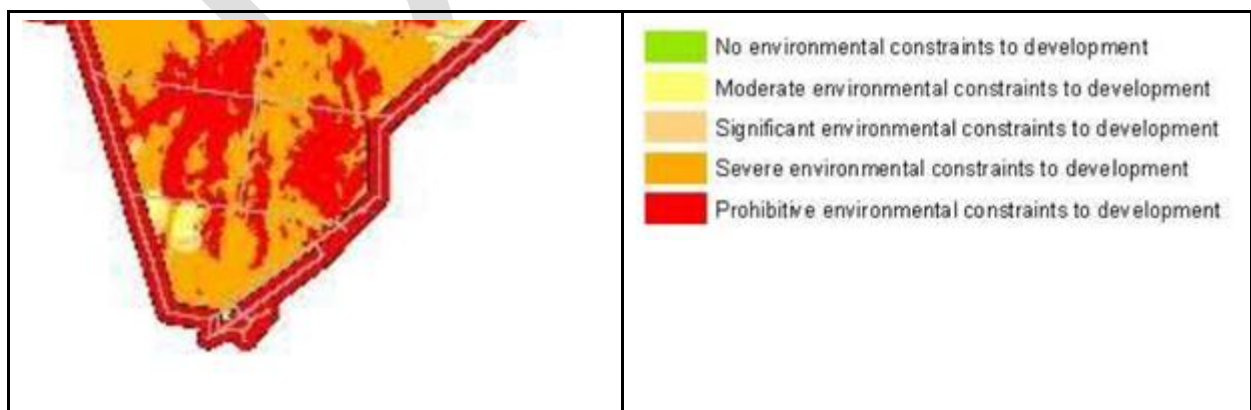
The review includes Council's former five-tiered mapping classification of Environmental Constraint and at page 26 states:

***" Protection of the Environment***

*The PCG agreed to use the most recent available data on environmental constraints as part of this review to ensure that land with prohibitive, severe or significant environmental constraints was appropriately considered when translating the land into LEP 2011."*

However, as previously demonstrated in *Lipman Properties Pty Ltd v Warringah Council*, this mapping was undertaken at a very broad scale, resulting in inaccuracies at a site level. Specifically, while the mapping identifies most of the site as having 'severe' environmental constraints, with pockets of 'moderate' and 'prohibitive' constraint, previous ground proofing has demonstrated that most of the site has only 'moderate' constraints, with small pockets of 'severe' constraint.

FIGURE 4 – EXTRACT: MAP 004 OF STRATEGIC REVIEW



On the basis of the above mapping, the recommendation of the Strategic Review that the site be included in zone 'E3 Environmental Management' has prima facie appeal. However, this same mapping was presented to the Court in *Lipman Properties Pty Ltd v Warringah Council* and scrutinised by various environmental experts. On the basis of this very detailed and site specific expert analysis, the Court found that the environmental constraints of the site should not preclude development, and development consent was granted as detailed above.

### 3.3 USE OF E3 ENVIRONMENTAL MANAGEMENT ZONE ON CLEARED LAND (PAGE 27)

The Strategic Review acknowledges that cleared land should not be included in the E3 Environmental Management Zone:

*"A number of submissions presented a view that the E3 Environmental Management zone is not appropriate for cleared land or land adjacent to existing residential areas. LEP Practice Note 09-002 outlines where the E3 Environmental Management zone may be applied and also indicates that it is generally not intended for cleared lands".*

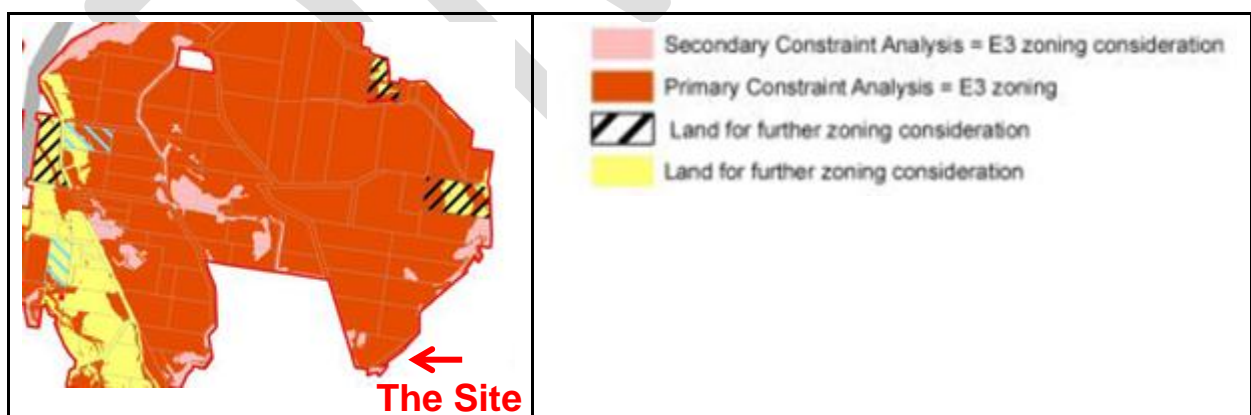
Notwithstanding the above, and the fact that a significant part of the site has been totally cleared of original vegetation, both around the existing dwelling house and below the adjacent escarpment (see Figure 1) the entire site is proposed to be included in zone 'E3 Environmental Management'.

### 3.4 SECONDARY ENVIRONMENTAL CONSTRAINTS ANALYSIS (MAP 006 – PAGE 34)

The DPI has rationalised Council's former mapping (above) and taken account of their own review and site inspection. However, while Willandra Village and other existing retirement villages have been hatched on Map 006 as "Land for Further Zoning Consideration", the site has been mapped as mainly "Primary Constraint Analysis = E3 Zoning", with only the existing dwelling site and cleared area mapped partly as "Secondary Constraint Analysis = E3 Zoning".

The failure to recognise the approved development on the site within this mapping has presumably informed the recommended zoning discussed below.

FIGURE 5 – EXTRACT: MAP 004 - STRATEGIC REVIEW



While the approved senior's housing development on the site has not been constructed, Lipman Properties Pty Ltd have expended significant resources securing the development consent and satisfying the deferred commencement conditions, including Council approval of the Environmental Management Plan (Consent Condition No. 10) and retention and protection of the threatened *pimelia curviflora* sp on the site (Consent Condition No. 11). We therefore submit that the Strategic Review should take into account the approved development on the site.

Rezoning the site to constrain the permissibility of the approved range and intensity of uses on the site would merely create the prospect of the approved development becoming a non-conforming use, triggering the 'existing use rights' provisions of the EP&A Act.

### 3.5 RECOMMENDATION OF REVIEW

The Strategic Review zones the majority of the locality 'Zone 3 Environmental Management', including:

*"land that is significantly constrained by environmental and infrastructure factors. This also includes land that is isolated, does not adjoin urban areas and/or would cumulatively have a significant impact if zoned to an alternative zone without first undertaking studies recommended by the PAC."*

In these regards:

- The Court has found that the site is not sufficiently constrained by environmental factors to preclude development.
- All urban infrastructure is available to the site.
- The site is not isolated, but directly adjoins established urban areas on three sides.
- An alternative zoning of the site that permitted urban development would not lead to any cumulatively significant impacts.

Other potential zonings include:

- Zone R2 Low Density Residential
- Zone R5 Large Lot Residential
- Zone RU4 Primary Production Small Lots
- Zone SP2 Special Purpose

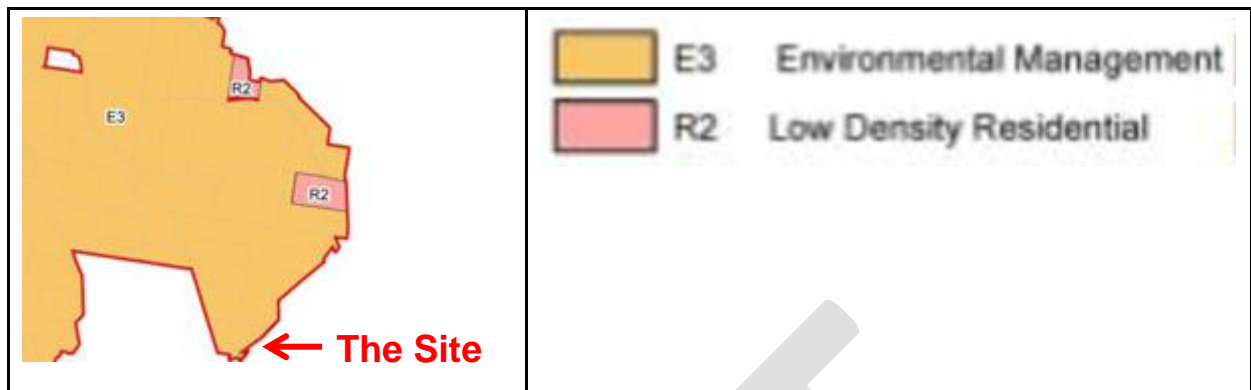
The recommendation of the Strategic Review states that, in addition to the Dawes Road Precinct, the R2 Low Density Zone is proposed to apply to:

*"Seniors Housing – there are several existing seniors housing sites within the strategic review area. Whilst it is unlikely these will be redeveloped in the near future, the proposed R2 Low Density Residential zone acknowledges the existing use of these sites and ensures that the current use for seniors housing is not non-conforming"*.

However, the review adopts Councils constraints mapping and therefore does not acknowledge the approved senior's housing development, and includes the site within the E3, rather than the R2 zone.



FIGURE 6 – EXTRACT: MAP 007 - STRATEGIC REVIEW



#### 4 Conclusion

The Strategic Review does not account for the existing clearing and weed infestation of part of the site, the existence of a significant dwelling house on the site, or the approval through the Court of a comprehensive redevelopment of the site for 32 senior's housing apartments. It also generally adopts Council's environmental constraint mapping, which on detailed examination in the Court was found not to be a sufficient basis to preclude comprehensive redevelopment of the site.

As detailed above, the site does not fulfil the stated criteria of the Strategic Review for an E3 Environmental Management zoning.

While the approved senior's housing development on the site has yet to be commenced, the approval is valid until 13 March 2017, and any down zoning of the site is only likely to increase the prospect of that consent being acted upon, thereby establishing a non-conforming use. This is an outcome that the Strategic Review explicitly seeks to avoid.

In view of the above we strongly submit that the site should be included in the R2 Low Density Residential Zone, not the E3 Environmental Management Zone, as currently proposed in the Strategic Review.

Yours sincerely,

Ian Cady  
Associate Director