



7 August 2013

Our ref: RJC:LR/11-103

The Director-General
Department of Planning and Infrastructure
33 Bridge St
SYDNEY NSW 2000

Dear Sir,

re: Draft Oxford Falls Valley and Belrose North Strategic Review – Submission prepared on behalf of the individual owners of Lots 1090, 1091, 1092 and 1093 Brooker Avenue, Beacon Hill

We write on behalf of Mr James Liu, who is the owner of Lot 1092 Brooker Avenue, Beacon Hill, as well as on behalf of Dong Bin Yao, the owner of Lot 1090, Zhi Cheng Liu, the owner of Lot 1091 and Xue Qing Wong, the owner of Lot 1093. The four lots are all contiguous and are referred to herein as “the land”.

The location of the land is identified in Figure 1. It will be noted that the land adjoins (but for the Brooker Avenue road reserve) land occupied by and zoned for standard residential subdivision.

Aerial photographs of the wider area and the land itself are provided in Figures 2A and 2B. Figure 3 provides details of each of the four lots which together comprise the land, the land's relationship to Oxford Falls Road (to the west) and Brooker Avenue (to the south-east), and the topography of the land.

The areas of the four lots, as shown on Figure 3, are as follows:-

Lot 1090	-	3.167 ha
Lot 1091	-	2.692 ha
Lot 1092	-	2.704 ha
Lot 1093	-	<u>2.845 ha</u>
Total		11.404 ha

The land forms part of the B2 Oxford Falls locality, pursuant to Warringah LEP 2000. When Warringah LEP 2011 was gazetted in December 2011, the B2 locality (along with the C7 Belrose North locality) was deferred from the new LEP.

The decision for deferment was made by the Minister for Planning, in response to concerns which had been expressed about the proposed E3 Environmental Management zone, under what was then the Draft LEP.

By letter dated 8 November 2011, the Minister advised Warringah Council as follows:-

"I note the Council resolution of 27 September 2011 to write to me requesting I make the draft LEP without any land deferred, or if land is to be deferred that lands owned by the Sisters of the Good Samaritan and the Roman Catholic Church, and land that was subject to a previous Part 3A proposal at the southern extent of the Oxford Falls Valley locality, be zoned E3 Environmental Management under the draft LEP.

While I support the protection of non urban land from inappropriate development, I believe it is important to review the suitability of the E3 Environmental Management zone for Oxford Falls Valley and Belrose North localities as a whole, which includes the three parcels of land mentioned above.

Accordingly, I reaffirm my previous advice to Council that I intend to defer all land proposed to be zoned E3 Environmental Management in the Oxford Falls Valley and Belrose North localities, which includes land owned by the Sisters of the Good Samaritan and the Roman Catholic Church and subject to a previous Part 3A proposal at the southern extent of the Oxford Falls Valley locality. Once the strategic review for Oxford Falls Valley and Belrose North localities has been completed, Council may lodge a planning proposal to include this land into the new LEP."

Subsequently, work has been undertaken by officers of the Department of Planning and Infrastructure and officers of Warringah Council in the form of the "Draft Oxford Falls Valley and Belrose North Strategic Review" ("the Strategic Review") dated April 2013, which has now been placed on exhibition. Its purpose "has been to translate the planning controls under Warringah LEP 2000 (LEP 2000) into the best fit zones and land use controls under Warringah LEP 2011 and to engage the community in the process".

We note that the "Executive Summary" of the Strategic Review states as follows:-

"The draft findings of the strategic review do not significantly change the urban development potential of land in Oxford Falls Valley and Belrose North. This is the role of a future review (Stage 2), which will involve commissioning major studies as recommended by the Planning Assessment Commission in its 2009 report of the Review of four sites in Oxford Falls Valley for Urban Development."

Unsurprisingly, the overall finding of the Strategic Review is that "the best land use zone for the majority of the study area is the E3 Environmental Management zone", which is what the land and the great majority of other land in the B2 and C7 localities were to be zoned in the Draft LEP from which those same lands were deferred.

The Strategic Review can therefore essentially be seen as an exercise in justifying the previously zoned E3 Environmental Management zone, which is to apply to most of the deferred area, including our client's land, until such time as the "major studies", which were recommended by the PAC four years ago, are undertaken.

Our client's major issues with the Strategic Review are:-

- (i) that it recommends imposition of a highly restrictive zoning (E3 Environmental Management) which should only be imposed if justified by the type of detailed studies which are yet to be undertaken; and
- (ii) that, once imposed, it is unlikely ever to be reviewed, notwithstanding the findings of the abovementioned studies. (In other words, the E3 zoning will itself be the reason for not rezoning to permit higher and better uses.)

Reference to the Department of Planning's Practice Note PN 09-002 "Environment Protection Zones" shows that:-

"The environment protection zones E2 through to E4 are applied where the protection of the environmental significance of the land is the primary consideration. Their importance for visitation, tourism and job creation should also be carefully considered.

Prior to applying the relevant zone, the environmental values of the land should be established, preferably on the basis of a strategy or from an environmental study developed from robust data sources and analysis. This is particularly important where land is identified as exhibiting high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves."

The Practice Note further states:-

"The zones are to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses."

Under the heading "Use of alternative zones", the Practice Note states:-

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

These extracts clearly indicate that the E3 Environmental Management zone is not an appropriate zoning – long- or short-term – to apply to an area where the detailed studies which are required to be undertaken (and have been acknowledged as being required to be undertaken for a period of some four years) have not yet been carried out. In this regard, it can reasonably be put that the "Special ecological, scientific, cultural, or aesthetic attributes or environmental hazard/processes that require careful consideration/management" which are intended to characterise the E3 zone need to be the subject, and are to be the subject, of further detailed study to determine urban (or more urban) development potential.

Our clients land adjoins Brooker Avenue which, in turn, is adjoined by standard residential subdivision. Our clients land also benefits from a development consent for aquaculture and (separately) for the erection of a new dwelling and in this regard, there appears to have been no proper, or at least adequate, consideration of the RU4 Primary Production Small Lot zoning as an alternative to the E3 Environmental Management zone, pending the conduct of the more detailed studies which are clearly required. Similarly, there has been no review of the minimum permissible lot size within the deferred area.

Our clients acknowledge that the outcome of the Strategic Review is largely dictated by its limited scope. However, any process whereby the detailed studies of urban development potential which are universally acknowledged to be needed can be indefinitely delayed, whilst in the meantime a highly restrictive zoning can be introduced, notwithstanding the absence of the studies on which that restrictive zoning is intended to rely, is one which is deeply flawed and cannot be supported.

Were it not for its limited scope, the Strategic Review should call for the carrying out of detailed urban development potential studies before the introduction of any new zoning of the area. Our clients would like an opportunity to meet with Project Control Group within the Department, possibly along with other owners of fringe lands within the area. On behalf of our clients we respectfully submit:-

- the urban development potential studies which the PAC recommended be undertaken in 2009 need to be carried out;
- there should be no removal of the areas “deferred” status until the necessary studies are carried out before any new zoning is introduced, particularly the E3 Environmental Management zone;
- inadequate consideration has been given to fringe lands, including our clients land;
- fringe lands have been previously identified as having potential for urban development;
- the failure of the Strategic Review to examine or review the 20 hectare minimum lot size requirement for the fringe lands is unreasonable and inequitable; and
- insufficient consideration has been given to the alternative of the RU4 zone for fringe lands, including our clients land.

Thank you for the opportunity to make this submission and look forward to hearing from you on the subject of the requested meeting.

Yours faithfully,



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