

# EVOLUTION PLANNING

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The General Manager  
Warringah Council  
Civic Centre 725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir or Madam:

**RE: Exhibition of Proposed Amendment to Warringah Local Environmental Plan 2011 – Land in the vicinity of Dawes Road and Perentie Road, Belrose.**

Evolution Planning has been engaged by Caltex Australia (Petroleum) Pty Ltd to prepare a submission to Council, on their behalf, in response to the proposed LEP Amendment.

Caltex presently owns the land at the corner of Forest Way and Dawes Road, 157 Forest Way, Belrose, which it has operated as a service station since at least 1980, providing fuel and convenience goods to the community for over 30 years.

We understand that Council has decided to remove the land, referred to hereafter as the 'subject area', from the wider strategic study area related to the Deferred Land under the current LEP, and by way of a separate Planning Proposal, "fast-track" the re-zoning of the land to R2 Low-Density Residential.

Prior to the land being deferred, Draft LEP 2011 had the site zoned as E3 Environmental Protection. Caltex previously objected to the proposed zoning, principally due to the inconsistency of existing development and the E3 zone.

The main purpose of the amendment is to expedite the achievement of a single LEP across the Council. This is considered to be commendable, but not, as discussed further below, when inadequate consideration or justification has been given to the proposed zoning.

In summary, Caltex wishes to object to the proposed zoning of the site to R2, principally due to the site being continued to be treated as a 'non-conforming' use. As outlined in the submission below, it is preferred that the zoning of the site is considered as part of the wider strategic study for the area, in terms of the retail hierarchy and the availability of local services to residents.

## **Submission**

### **1. Local Services - Strategic Context**

Excluding the non-residential uses in, or in close proximity to, the subject area, the Belrose and Frenchs Forest localities are serviced by the Glenrose and Frenchs Forest Shopping Centres, and smaller neighbourhood centres on Ralston Avenue and Sorlie Street. All of these sites are located to the west of Forest Way. Refer to Locality Plan below.

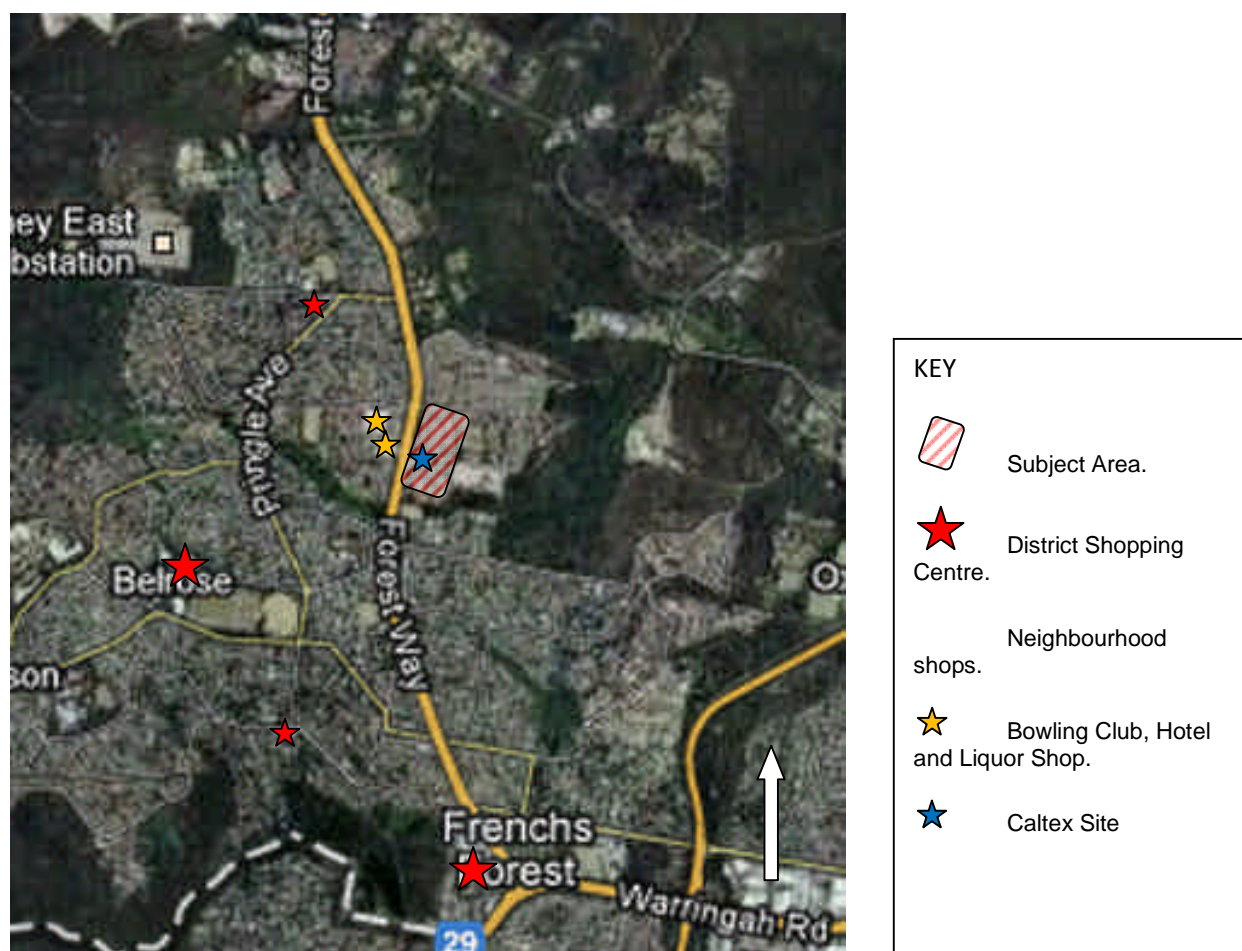


Figure 1: Locality plan

The subject area includes the Service Station, (with associated convenience retailing and workshop); and, a 'shop-top housing' development, (with associated café and convenience store), located immediately adjacent to the service station to the west.

Directly opposite the Caltex site on Forest Way lies the Belrose Bowling Club, with the Belrose Hotel and Liquor Shop to the north off Hews Parade. There are no other retail uses on the east side of Forest Way, despite the extent of existing and planned future residential development in this location.

We submit that the significant role the service station plays in the local retail hierarchy, and the extent by which the community relies on this local service, is highly relevant to the proper strategic planning of the area, and that further consideration should be undertaken in these respects in the context of the wider study.

The subject area, and other land further to the north, also comprises aged care development which benefits from having local services conveniently located, as recognized in the relevant State Policy. The



service station partly provides such services and should be recognised legitimately for doing so in the planning framework.

## 2. Non-conformity of Use

Under the DLEP, the site will continue to operate as a non-conforming use in accordance with s.106 of the Act. The recent Government review of the current planning system acknowledges the deficiencies with mechanisms related to existing use rights, and despite recommendations for Council to make declarations to confirm the extent of such rights, further review of this often complex piece of legislation is anticipated.

The proposal fails to recognize the service station as a long-established part of the urban fabric and its importance in the retail hierarchy, and once again is essentially excluded from the local planning framework. The service station has outlasted Council's last two comprehensive LEPs, and given the continued demand for fuel and convenience goods at this location, will likely outlast the life of the proposed LEP.

The service station is relatively dated and due to public expectations in terms of the availability of goods, was unable to satisfactorily accommodate storage requirements, without the use of shipping containers. A new separate storage room is presently under construction, but the development remains below Caltex retail standards and public expectations of a modern service station facility.

Despite the provisions of the Act allowing the redevelopment and enlargement of existing uses, the owners of the land should be able to redevelop this long established existing use to modern standards, like any other contemporary service station development, without the restraint of the proposed background R2 zoning, and the risk that Council may object to the modernization of the facility due to a likely increase in retail floor space, for such reasons.

Land zoned R3 Medium Density Residential located to the north and south of the subject area and comprises master-planned estates, within which local shops are permitted. As far as we are aware, none have been built, or are planned to be built in the immediate future. The service station and adjacent shop-top housing which only recently now includes a convenience store along with the established restaurant, are the only local convenience outlets serving residents at the east side of Forest Way, but the LEP treats them as undesirable uses.

In the case of the service station site, the failure to recognize this important local service, and impose a planning regime which will likely restrain any redevelopment to an outcome which would be substandard and below community and industry expectations is not considered to be in the public interest.

The Panel, in considering the "Gateway" outcome, resolved to allow the separate planning proposal to proceed to public notification subject to a number of conditions, one being, *"how the planning proposal will address the matter of non-conforming uses"*. The response given by Council does not address the non-conforming uses, as requested, but rather simply acknowledges that they have existing use rights.

## 3. Lack of justification for the proposed zoning

The proposal does not adequately justify the R2 zoning. The main reasoning for the zoning would appear to be for administrative purposes to remove this distinct non-conforming area to simplify the wider strategic study and expedite the achievement of a single LEP without adequate consideration to the zoning.



By area, approximately two-thirds of the existing approved land uses in the subject area, (service station, shop-top housing, and aged care housing), are not permitted in the R2 zone under LEP 2011 and it is difficult to understand why the R2 zone has been proposed. Refer to annotated plan below showing the extent of uses which would not be permitted in the subject area.

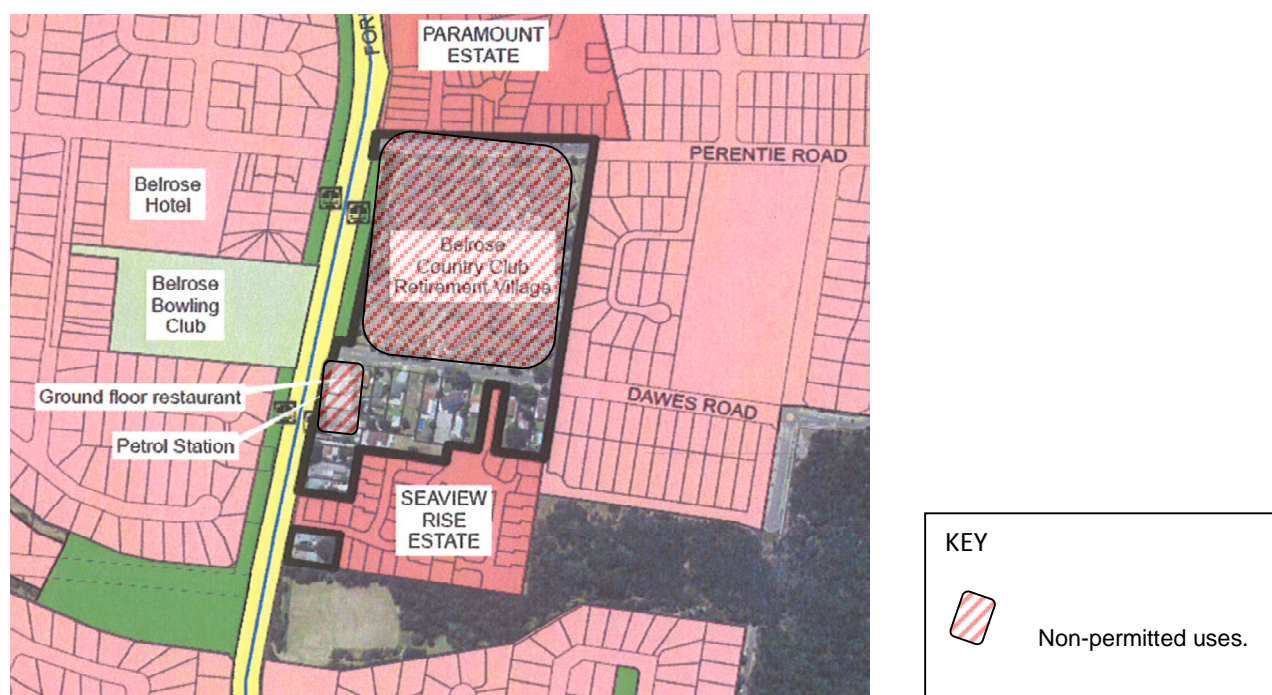


Figure 2: Extract from planning proposal showing extent of uses which are not permitted under R2 zoning

The density of residential development in much of the subject area is also higher than that anticipated in the R2 zone, with nearly 300 residential units located within the Belrose Country Club Retirement Village.

Given the inconsistencies of the existing uses and the density characteristics of the subject area and the R2 zone, and the proximity of R3 zoned land, immediately to the north and south of the site, the area would more appropriately be zoned as R3 Medium Density Residential, which would permit aged care housing and local shops.

This would not however rationalise the service station and shop-top housing uses which are not permitted in the R3 zone and we propose that consideration be given to zoning these sites B2 Local Centre or B1 Neighbourhood Centre, with an additional use clause inserted to permit service stations on the land.

In conclusion we submit that further consideration be given to the planning proposal for the following reasons:

- The proposed zoning is inappropriate to the current land use and development characteristics of the subject area and has not been adequately justified;
- The significance of the service station in the local retail hierarchy has been ignored;
- The continued treatment of the development as a non-conforming use has not been justified and will likely lead to unreasonable constraints on the owners to update the facility to modern standards;



- The service station site is better suited to development for non-sensitive purposes as recognised under SEPP (Infrastructure) 2007 with respect to development adjacent to classified roads, and is ideally suited for service station and convenience retailing purposes.

On behalf of Caltex, Evolution Planning would like to thank Council for this opportunity to contribute to the future planning of the area and would be pleased to work with Council to achieve a more appropriate zoning regime and development controls for the service site, perhaps by way of the preparation of a site specific DCP.

If we may be of further assistance or Council wishes to discuss these matters further, please contact the undersigned directly.

Yours sincerely,

Tony Robb  
Principal  
BA(Hons).UPS, Dip.UPS (Westminster).