

CONOMOSLEGAL
DEVELOPMENT & PLANNING LAWYERS

30 August 2013

Department of Planning and Infrastructure
Sydney East Region
GPO Box 39
SYDNEY NSW 2001

Dear Sir

**Written Submission - Oxford Falls Valley and Belrose North Strategic Review
Lots 1059, 1068 and 1071 Spicer Road South, Oxford Falls
Our Ref: VC:KB:S9212**

We act for the following land owners:

1. Message Marketing Pty Ltd (Director Mr M Nowytarger) – owner of lot 1068 Spicer Road South, Oxford Falls;
2. Mr J Spiegel – owner of lot 1071 Spicer Road South, Oxford Falls; and
3. Mr S Williams – owner of lot 1059 Spicer Road South, Oxford Falls.

Our clients on this matter attended the writer's office in early August expressing their concern regarding the land use zoning proposed in the "Oxford Falls Valley and Belrose North Strategic Review", which proposes to zone their respective allotments as E3 Environmental Management.

After detailed consideration of exhibited documentation relating to the matter and after also having had the opportunity to review the submission of the Warringah Urban Fringe Association, the writer recommended to the above three property owners that the writer undertake a view of their properties. We also recommended that our clients retain the technical expertise of GSA Planning, town planners and Dr Kevin Mills, ecologist, of Kevin Mills and Associates.

The writer has specialised in local government and planning law since being admitted as a lawyer in 1997. During that time we have been involved in a large number of matters involving ecological issues. Some of the cases that we have been involved in have become case law precedent over time. On a large number of those matters we have retained the services of Dr Kevin Mills, who is a highly respected expert witness in the Land and Environment Court.

We have also been involved in a number of projects with GSA Planning, town planners. They are known for their expertise with regard to the preparation of Statements of Environmental Effects and in the preparation of rezoning applications.

The writer recommended to our clients that the engagement of the above experts was warranted on this matter and that it was our opinion that those experts would form the conclusion that lots 1059, 1068 and 1071 did not warrant an E3 zoning. We were of the opinion that a forensic analysis of these particular allotments by the experts (as opposed to the desktop analysis undertaken for the strategic review) would demonstrate that this E3 zoning was not the appropriate zoning for the allotments.

During the writer's own site attendance it was quite obvious that the majority of the areas of the allotments were cleared and could be seen as of no ecological value. Coupled with the extent of clearing of the land, sheds, and semi rural uses were clearly evident on the allotments.

The writer's own opinion was fortified by the opinions of Dr Mills, once he had attended the subject allotments. Dr Mills prepared a report, which is annexed to this letter.

Dr Mills, in his report, observes that *all lots have a long history of rural and/or industrial use. Existing and approved developments and activities include horse stabling and agistment operation, operation of a home business, market gardening, orchards, alpaca grazing, a vineyard, quarrying of sandstone, removal of a large amount of soil and chicken farms. Today all lots contain houses, sheds, dams and/or roadways, and the evidence of past quarrying and other activities is clearly visible.*

Dr Mills further observes that *Lots 1068 and 1059 are not identified as land for consideration as E3 zone on any map, yet the zoning map proposes such a zone over both lots.*

Dr Mills concludes in his report that, *after inspecting the subject properties, it is our view that the majority of the land contained on the three properties is not "significantly constrained by environmental factors". He states that although we are not claiming to be town planners, it seems to us that one or more of the rural zones would be more appropriate for much of the Oxford Falls land. We have no disagreement with an E3 zoning over land that clearly has high environmental value such as natural bushland, or indeed for other land that, although disturbed/partly cleared, may form useful buffers or corridors that supplement bushland areas. This is not the case with the subject lots.*

Also attached to this letter is a report prepared by GSA Planning. That town planning report provides photographs of the subject allotments, as they exist today, and provides a detailed description of each of the allotments. The report also identifies

that the subject site is located approximately 22km north of the Sydney GPO, 5.5km from Warringah Mall, 4km from Forestway Shopping Centre Warringah, and approximately 1km from a new hospital being constructed on the corner of Warringah Road and the Wakehurst Parkway. The site is located within the local Government Area(LGA) of Warringah. The town planning report identifies that these properties are largely cleared of vegetation and do not exhibit the characteristics or qualities of the E3 zone.

The GSA Planning report provides the following expert town planning opinion:

In our opinion, there are a number of compelling planning reasons to support our findings that the E3 zone is not appropriate. Our reasons for objecting to the proposed E3 zone are as follows:

- 1. This is not the correct zone for the subject site;*
- 2. Inaccuracy of the site constraints – the subject sites are mostly cleared and do not contain any significant or special ecological vegetation;*
- 3. The E3 zone is inconsistent with Warringah LEP 2000;*
- 4. The proposed zoning is inconsistent with the existing uses- our clients would have to rely on existing use rights to develop their land; and*
- 5. There are more appropriate zonings for the subject sites.*

The report also indicates that, in the opinion of GSA Planning, *having regard to the existing site conditions, zoning and uses on site, in our opinion, an RU4 or R5 zone would be more appropriate.*

Having had the benefit of reviewing relevant documentation; attending the relevant properties and reviewing the attached expert reports, we are of the opinion that the Draft Study is in error as it relates to our clients' properties.

The "facts" upon which the conclusions are drawn, as the report relates to our clients properties, are fundamentally inaccurate. On that basis alone, the findings of the study, as they relate to our clients properties, must necessarily also be flawed.

Any decision to endorse the study, as it currently relates to our clients properties, would in our opinion be manifestly unreasonable and without proper foundation.

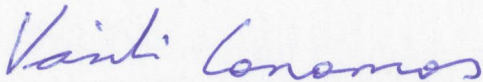
The attached expert reports identify the inaccuracies in the "Oxford Falls Valley and Belrose North Strategic Review" (as it relates to our clients properties) and make abundantly clear that an obvious injustice would eventuate if the E3 zoning is applied to our clients' properties. For the purpose of the current study, as recommended by GSA Planning, the correct zoning to be applied should be RU4 or R5.

We are pleased that the NSW planning process facilitates public comment regarding draft strategic reviews so that anomalies or inaccuracies can be addressed and rectified at a relatively early stage in the planning process.

We would trust that the Department of Planning and Infrastructure will adopt the recommendation of GSA Planning and Kevin Mills and Associates that the E3 zoning not apply to our clients properties but rather that the RU4 or R5 zoning should currently apply for the purpose of the Strategic Review.

We and our clients' experts would be happy to meet with the Department of Planning and Infrastructure to discuss in greater detail any aspect of this letter or the attached reports, if required.

Yours faithfully



Vasili Conomos

Encl.