

10.0 PLANNING PLACE & COMMUNITY DIVISION REPORTS

ITEM 10.1	PLANNING PROPOSAL – DEFERRED LANDS IN OXFORD FALLS AND BELROSE – WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2018/109768
ATTACHMENTS	1 ⇒ Draft Planning Proposal (Included In Attachments Booklet) 2 ⇒ Gateway Determination (Included In Attachments Booklet) 3 ⇒ Five Options (Included In Attachments Booklet) 4 ⇒ Sites in Oxford Falls Valley for Urban Development (Included In Attachments Booklet)

EXECUTIVE SUMMARY

PURPOSE

To inform Council of the Gateway Determination for the Planning Proposal for Oxford Falls Valley and Belrose North (Deferred Lands) and seek Council's endorsement to request that the Minister of Planning (Minister) not proceed with the Planning Proposal.

SUMMARY

The former Warringah Council at its meeting on 24 February 2015 resolved to proceed with a Planning Proposal to transfer planning controls for land in Oxford Falls Valley and Belrose North (Deferred Lands) from Warringah Local Environmental Plan 2000 (WLEP 2000) to Warringah Local Environmental Plan 2011 (WLEP 2011). Council submitted the draft Planning Proposal (Attachment 1) to the Department of Planning and Environment (the Department) on 15 April 2015 for a Gateway Determination.

Approximately two and half years later, on 1 November 2017, the Department issued a Gateway Determination (Attachment 2).

The Gateway Determination requires Council to, amongst other things, complete a detailed review of the future urban development potential of four sites in the Deferred Lands area (Oxford Falls West, Red Hill, Lizard Rock, and Cromer Golf Club), further examine the environmental significance of land proposed to be zoned E4 – Environmental Living, and to amend the Planning Proposal having regard to those investigations prior to undertaking any community consultation on the Planning Proposal.

The Gateway Determination requirements represent a departure from the process, methodology and recommendations previously agreed to by the Department and adhered to by Council, are not warranted having regard to Council's District Plan housing targets, and will result in significant resource and financial costs for Council to meet.

This report presents options to respond to the Gateway Determination and recommends that the Minister be requested not to proceed with the Planning Proposal.

RECOMMENDATION OF ACTING GENERAL MANAGER PLANNING PLACE & COMMUNITY

That:

- A. Council, in accordance with s3.35(4) of the *Environmental Planning and Assessment Act 1979*, request the Minister for Planning to determine that the Planning Proposal for Oxford Valley Falls and Belrose North should not proceed for the following reasons:
- a. The Gateway determination requirement to complete “Stage 2” Review of four sites in the Deferred Lands area prior to exhibiting the Planning Proposal reneges on previous longstanding agreements with the Department of Planning and Environment regarding the Local Environmental Plan translation process
 - b. The Stage 2 Review requires costly and time consuming studies that should be funded by the Department of Planning and Environment
 - c. The 2009 Planning Assessment Commission Review Report regarding the four sites generally concludes that the area is unlikely to be suitable as a release area
 - d. The Department of Planning and Environment did not support the development of the four sites in its submission to the 2009 Planning Assessment Commission Review
 - e. Urban Development in Oxford Falls Valley/ Belrose North is inconsistent with the draft Greater Sydney Regional Plan
 - f. Urban Development in Oxford Falls Valley/ Belrose North is inconsistent with the Revised Draft North District Plan
 - g. Council can meet its housing targets under the Revised Draft North District Plan without developing non-urban land
 - h. Undertaking studies for Oxford Falls Valley/ Belrose North would pre-empt Council’s Local Planning Strategy and Local Housing Strategy.
- B. Council include a copy of this report with Council’s request to the Minister for Planning outlined in A.
- C. Council notify affected landowners of its request to the Minister for Planning outlined in A.
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REPORT

BACKGROUND

All Councils in NSW were required to prepare "Standard Instrument" Local Environmental Plans in accordance with the requirements of the Department of Planning and Environment (the Department). The former Warringah Council, undertook a comprehensive process to prepare its Standard Instrument LEP and the Warringah LEP 2011 (WLEP2011) was successfully developed.

However, in December 2011 the Minister of Planning deferred land in Oxford Falls Valley and Belrose North from the WLEP2011 in response to stakeholder concerns regarding the adequacy of consultation during the preparation of WLEP2011.

On 5 June 2012, Council resolved to undertake the first of two stages of a Strategic Review of the lands in partnership with the Department. Stage 1 of the review involved the transfer of the Deferred Lands in Oxford Falls Valley and Belrose North into WLEP2011. Stage 2 of the review involved the consideration of the future urban development potential for the area.

Upon completion of Stage 1 of the Strategic Review, the matter was considered by the former Warringah Development Assessment Panel (WDAP) which developed five options (Attachment 3) for consideration:

- Option 1: The majority of land zoned E3 with smaller areas of land zoned R2, R5, RU4 and SP2; Schedule 1 Additional Permitted Uses being amended; amendment to Clause 6.6; 3(b) to ensure a dwelling house will continue to be permitted on certain land as permitted under WLEP2000.
- Option 2: A compromise between Option 1 and the Minister's opinion (Option 3).
- Option 3: The Minister's opinion that any land zoned E3 (under Option 1) that contains 'no-to moderate' environmental constraint should remain deferred.
- Option 4: WDAP recommendation that all land remain deferred pending Stage 2 of the Strategic Review.
- Option 5: Warringah Urban Fringe Association (WUFA) recommendation to maintain all R2, R5, SP2 and RU4 zoned land as identified in Option 2, however, also zone large areas of land RU4 (where this land is proposed to be zoned E3 under Option 1 and 2).

Council officers recommended that Option 1 be adopted. Council at its meeting on 26 August 2014 resolved:

1. *That Council notes:*
 - A. *That Council staff have consistently followed the methodology determined by the NSW Department of Planning and Environment.*
 - B. *The conflicting advice it has received from the NSW Department of Planning and Environment and from the former Minister.*
 - C. *The residents' concerns regarding the review of their individual parcels of land by the NSW Department of Planning and Environment led team.*
 - D. *That the previous Council was in favour of Stage 2 of the Planning and Assessment Commission recommended studies being carried out immediately.*
 - E. *That the E3 zone is being reviewed by the NSW Department of Planning and Environment.*

2. *That Council:*
 - A. *Requests the NSW Department of Planning and Environment to consider the report which is Item 8.1 on tonight's agenda and make a determination by selecting one of the five options.*
 - B. *Recommends the renaming of the E3 zone to address public concern about the implications of having a zone entitled "Environmental Management".*
 - C. *Recommends that Stage 2 of the Planning and Assessment Commission recommended studies be carried out immediately by the State Government.*
 - D. *Expresses its concern to the State Government at the rising costs of unnecessarily administering two Local Environmental Plans.*
 - E. *Informs affected landowners of this resolution.*

On 23 January 2015, the Department responded to Council's resolution with a clear direction that a Planning Proposal be submitted based on Option 2 but with certain RU4 zoned areas changed to E4 zones. Council resolved on 24 February 2015 to proceed with the Planning Proposal in accordance with the Department's direction and the Planning Proposal was submitted to the Department on 15 April 2015 for a Gateway Determination. A Gateway Determination was not forthcoming for two and a half years.

Between April 2015 and November 2017 senior Council officers were in regular contact with the Department's staff to offer any assistance required to move the Planning Proposal forward. Council wrote to the Minister(s) and to the head of the Greater Sydney Commission and met with senior Departmental staff to ascertain the reasons for any delay and to provide assistance if required.

Despite these efforts, Council was not provided with any reason for the delay or offered an opportunity to address any outstanding concerns with the (agreed) Planning Proposal.

On 1 November 2017, the Department issued a Gateway Determination for the Planning Proposal subject to the following conditions:

1. *Prior to community consultation, Council is to complete stage 2 of the Strategic Review. This study should also examine the environmental significance of land proposed to be zoned E4 Environmental Living. The Planning Proposal must be revised to reflect any recommendations of the stage 2 study.*
2. *Prior to community consultation, the Planning Proposal is to be updated to:*
 - a) *demonstrate consistency with the draft North District Plan*
 - b) *insert a Schedule 1 Additional Permitted Uses for Oxford Falls Grammar School*
 - c) *require home based childcare be permissible with consent in environmental zones*
 - d) *include a sunset provision for a set timeframe of 3 years to allow land owners to seek development approval for currently permitted uses and a suitable savings provision for development applications lodged but not yet determined*
 - e) *provide a new project timeline.*
3. *Prior to community consultation, the revised Planning Proposal is to be provided to the Department for review and approval for public exhibition.*
4. *Community consultation is required under sections 56(2) and 57 of the Act as follows:*

- a. *the Planning Proposal must be made publicly available for a minimum of **28 days***
 - b. *the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with Planning Proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2016)*
 - c. *write to landowners in the area effected (sic) by the proposal.*
5. *Consultation is required with the following agencies under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:*
- *NSW Rural Fire Service*
 - *NSW Aboriginal Land Council*
 - *Office of Environment and Heritage*
 - *Office of Environment and Heritage – NSW National Parks and Wildlife Service*
 - *Sydney Water*
- Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.*
6. *A public hearing is not required to be held into the matter by any person or body under section 56(2) (e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).*
7. *The Planning Proposal is to be finalised within **12 months** from the date of the Gateway Determination.*

Stage 2 of the Strategic Review

Stage 2 of the Strategic Review, as required by condition 1 of the Gateway Determination, is largely based on the recommendations of a 2009 report authored by the Planning Assessment Commission (the Commission) which reviewed the potential of four specific sites in Oxford Falls Valley for urban development (Attachment 4) (Oxford Falls West, Red Hill, Lizard Rock, and Cromer Golf Club) at the request of the then Minister for Planning.

The Commission report was generally critical of the proposal, stating:

- None of the 4 sites substantially meets the sustainability criteria as required by the Metropolitan Strategy
- The sites fail to meet the sustainability criteria relating to access because of their distance from key centres and from public transport
- The low density housing generally proposed on the sites is not the kind of housing needed in the subregion
- There is potential land use conflict with the Earth Satellite station in Oxford Falls West, particularly for Lizard Rock and Oxford Falls West
- Parts of the four sites may be able to meet the sustainability criteria relating to Environmental Constraints. However, the cumulative impact of development on the sites must be assessed before any decisions are made to release the land for urban development

- The assessment of cumulative impact requires the assessment of the impact of future urban release areas in the whole Oxford Falls Valley area. This requires the update or completion of further studies.

In addition, the Commission noted that none of the sites were of sufficient size to function as an urban release area, being too small and dispersed to justify the increased public transport and local services required to meet the sustainability criteria.

The Commission concluded that none of the four sites were capable of urban development for at least ten years and recommended that the entire Oxford Falls catchment area be reviewed holistically to determine future development potential by undertaking the following studies:

- Transport and accessibility – road-network and bus-route potential in the Oxford Falls topography
- Management of bushfire hazard
- Water quality, aquatic ecology and hydrology of the Narrabeen Lagoon and its catchment
- Flora and fauna protection
- Visual analysis
- Satellite communication buffer zones.

In addition to the above study, and having regards for experience in Ingleside, in order to undertake a comprehensive assessment of land and development capabilities the following additional studies are also required:

- Social Infrastructure
- Land capability, salinity and contamination
- Indigenous heritage
- European heritage
- Infrastructure delivery.

Gateway Determination

The Deputy Secretary of the Department of Planning and Environment in his letter accompanying the Gateway Determination states that the new approach to the process was preferable "...given the ongoing community interest in the proposal's intention to apply environmental zones to existing land uses and the difficulty of clearly translating the existing permissible land uses to standard instrument zones."

It is noted the Department agreed to apply Environmental zones to existing residential land uses elsewhere in the Council area when translating WLEP 2000 to WLEP 2011, for example, Kimbriki Road and Mona Vale Road Terrey Hills. The proposed translation in zones in Oxford Falls is no different in that regard.

In addition, the Department created the E3 zoning under the Standard Instrument and agreed to its application in this locality. Even if Council accepted that the application of the E3 zone was somehow problematic, any issue with the translation of WLEP 2000 to the new standard instrument LEP is the responsibility of the Department. Council followed the Department's instructions in the matter.

OPTIONS TO RESPOND TO GATEWAY DETERMINATION

Three options have been considered to respond to the Gateway Determination. The required next steps and advantages and disadvantages of each option are summarised below.

1. Comply with Gateway requirements

Next steps:

- Undertake technical studies as required by Gateway Determination conditions
- Proceed to undertake amendment to LEP once studies are complete.

Advantages:

- Will result in detailed environmental studies for the area
- May assist in bringing the matter to conclusion so that the standard planning instrument applies to the entire Council area.

Disadvantages:

- The total cost of the required technical studies will be significant as evidenced by recently planned release areas and planned precincts
- The Department has not committed to funding studies (Council has repeatedly requested they be undertaken by the Department)
- There is no guarantee that the Department will support outcomes of studies given its failure to support the previously agreed Planning Proposal process with Council
- Land release in this area is inconsistent with draft Greater Sydney Regional Plan and Revised draft North District Plan
- Undertaking required studies would pre-empt Council's Local Planning Strategy/ Local Housing Strategy
- The required studies would divert Council resources away from preparation of a Local Planning Strategy as required by the soon-to-be-released North District Plan
- The required studies would take an extended timeframe to complete.

2. Prepare an amended Planning Proposal - replacing Environmental zones with Rural Residential zones

Next steps:

- Approach Department with an amended Planning Proposal replacing Environmental zones with Rural Residential zones
- Re-exhibit the amended Planning Proposal
- Resubmit to Department of Planning & Environment for a Gateway Review.

Advantages:

- The approach may be supported by the Department with less-detailed studies
- May assist in bringing the matter to conclusion so that the standard planning instrument applies to the entire Council area.

Disadvantages:

- Impact of future development on catchment health unknown
- Will result in a significant reduction in environmental protections for the Narrabeen Lagoon catchment
- Costs of required studies may still be significant
- No justification for this approach based on previous strategic analysis done by the Department and Council
- Would enable extension of the Seniors Housing State Policy to the area with consequent environmental impacts
- There is no guarantee that the Department will support outcomes of studies given its failure to support the previously agreed Planning Proposal process with Council.

3. Withdraw current Planning Proposal**Next steps:**

- Write to Department to seek withdrawal of the Planning Proposal
- WLEP 2000 to continue to apply to deferred lands until Local Planning Strategy is complete.

Advantages:

- Council's current planning controls continue to apply satisfying concerns of land being "down zoned"
- Current planning controls provide known protection for the Narrabeen Lagoon catchment
- Housing provision is considered as part of a holistic, LGA-wide review of housing and development issues in preparation of Council's overarching Local Planning Strategy
- Prevents "patchwork quilt" approach to strategic planning for the area as proposed by the Department.

Disadvantages:

- The matter would remain deferred and subject to a separate planning instrument (Warringah LEP 2000)
- Future planning for the area would be tied to the completion of the Local Planning Strategy which will take considerable time to undertake
- The Minister may take over the "Relevant Planning Authority" role from Council and seek to progress the Planning Proposal on his terms.

DISCUSSION**Requirement to complete Stage 2 Reviews reneges on previous longstanding agreements**

The process, methodology and recommendation for the project to transfer the deferred lands into Warringah LEP 2011 were developed by the Department in 2012. Since 2014 it has been agreed that the Stage 2 review would not commence until the Stage 1 translation was completed. To renege on that agreement 3 years into the translation process is unreasonable and unacceptable.

The Council and the Department jointly undertook the Project, investing significant public resources in community consultation and assessment processes, including visiting a number of sites. Not proceeding with the proposed translation and instead undertaking Stage 2 studies would not be an effective use of public funds.

No justification has been provided for the Department's changed position to council.

Despite the period of time which has elapsed since the Planning Proposal was submitted to the Department and the number of meetings and communications with high-level Departmental staff during that time in an effort to resolve apparent concerns, no indication was given at any time that there would be a requirement for the completion of the Stage 2 Review prior to progression of the Planning Proposal.

Stage 2 review requires costly and time consuming studies

The Planning Assessment Commission (the Commission) review of four sites in Oxford Falls Valley for Urban Development in 2009, instigated following the request by four major land holders, recommended to the then Minister that the future development potential of the Oxford Falls catchment area as a whole could not be determined until a range of major studies were completed, namely:

- Transport and Accessibility
- Bushfire Management hazard
- Water quality, aquatic ecology and hydrology of Narrabeen Lagoon and its catchment
- Flora and fauna protection
- Visual analysis
- Satellite communication buffer zones.

In addition, it is likely that the following additional studies will also be required:

- Social Infrastructure
- Land capability, salinity and contamination
- Indigenous heritage
- European heritage
- Infrastructure delivery.

The background studies required by the Gateway are extensive and costly, with potential for expenditure of close to \$1 million based on similar work done elsewhere.

In recent times this type of urban investigation has been led and paid for by the Department of Planning and Environment, not Council e.g. the Frenchs Forest and Ingleside Precinct. It is unreasonable therefore for Council to undertake this work without appropriate funding support.

In September 2014, Council wrote to the Secretary of Planning to communicate a resolution of Council on 26 August 2014 to, amongst other things, request the Department carry out these planning studies. Council also wrote to the then Minister to advise that expenditure of public funds for urban capability studies on land within the deferred area was premature and not a responsible use of the community's money.

Council has never identified this area for land release and does not have the budget or resources to undertake this work and deliver on our other planning commitments including the Ingleside Precinct Plan, Frenches Forest Planned Precinct, Brookvale Structure Plan, Housing Strategy, etc.

Further, it will not be possible to undertake these studies and complete the Gateway requirement for a 12 month timeline to complete the Planning Proposal process.

The 2009 Commission Review Report generally concludes that the area is unlikely to be suitable as a release area

The Commission report was generally critical of the proposal, concluding:

- None of the 4 sites substantially meets the sustainability criteria as required by the Metropolitan Strategy
- The sites fail to meet the sustainability criteria relating to access because of their distance from key centres and from public transport
- The low density housing generally proposed on the sites is not the kind of housing needed in the subregion
- There is potential land use conflict with the Earth Satellite station in Oxford Falls West, particularly for Lizard Rock and Oxford Falls West
- Parts of the four sites may be able to meet the sustainability criteria relating to Environmental Constraints. However, the cumulative impact of development on the sites must be assessed before any decisions are made to release the land for urban development
- The assessment of cumulative impact requires the assessment of the impact of future urban release areas in the whole Oxford Falls Valley area. This requires the update or completion of further studies.

In addition, the Commission noted that none of the sites are of sufficient size to function as an urban release area. They are too small and dispersed to justify the increased public transport and local services required to meet the sustainability criteria.

The Department did not support the Development of the sites in its submission to the 2009 Commission Review

In the summary of submissions in the Commission report, the Department opposed the urban development of the sites because it was inconsistent with:

- The State Plan
- Metropolitan Strategy
- Draft North East Subregional Strategy
- Metropolitan Development Program
- Warringah LEP
- Draft Comprehensive LEP
- Access to Transport Services
- Sustainability Criteria and Key Constraints

Urban Development in Oxford Falls Valley is inconsistent with the draft Greater Sydney Regional Plan

The recently released draft Greater Sydney Regional Plan (the Plan), "Our Greater Sydney 2056" identifies Oxford Falls Valley and Belrose North as Metropolitan Rural Land. Strategy 29.1 and 29.2 of the Plan state respectively:

- Maintain or enhance the values of the Metropolitan Rural Areas using place-based planning to deliver targeted environmental, social and economic outcomes, including rural residential development
- Limit urban development to within the Urban Area, except for the investigation areas at Horsley Park, Orchard Hills, and east of the Northern Road, Luddenham

In addition, the Plan includes the following relevant Objectives and Strategies which are inconsistent with the Review:

- Objective 37 of the Plan "Exposure to natural and urban hazards is reduced" specifically refers to avoiding placing new communities in areas exposed to existing and potential hazards (e.g. bushfire)
- Strategy 25.1 Protect environmentally sensitive coastal areas and waterways
- Strategy 25.3 Improve the health of catchments and waterways through a risk-based approach to managing the cumulative impacts of development including coordinated monitoring of outcomes
- Strategy 4.1 Maximise the utility of existing infrastructure assets and consider strategies to influence behaviour changes, to reduce the demand for new infrastructure, including supporting the development of adaptive and flexible regulations to allow decentralised utilities
- Strategy 14.1 Integrate land use and transport plans to deliver the 30 minute city.

Urban Development in Oxford Falls Valley is inconsistent with the Revised Draft North District Plan

The Revised draft North District Plan contains the following relevant priorities and actions:

Planning Priority N18 – Better Managing Rural Areas, in the Draft Plan states that:

"..Urban development in the Metropolitan Rural Area will only be considered in the investigation areas identified in the draft Greater Sydney Regional Plan. There are no investigation areas in the North District"

Specifically, Action 67 in the Plan states:

"67 Limit urban development to within the Urban Area"

The proposed investigation of development potential in the Deferred Lands is contrary to the above priorities and actions.

Council can meet its housing targets without developing non-urban land

The Revised draft North District Plan identifies Ingleside as a Priority Growth Area (3400 dwellings) and Frenchs Forest as a Priority Precinct (5,360 dwellings on completion subject to additional infrastructure provision). Potential also exists for Brookvale to accommodate an additional 600-900 dwellings (Brookvale Structure Plan). Accordingly, Council can achieve its 0-5 year housing target of 3,400 new dwellings. Beyond this, a proper strategy will be developed to identify appropriate areas in which to accommodate growth.

In this regard, the Warringah community, at the 2009 Talk of The Town summit, gave a clear message that urban growth targets should not be achieved in non-urban lands. Council endorsed this position. More recently, Council has supported the meeting of housing targets through infill development at Frenchs Forest and Brookvale. There is therefore no strategic need for this land to be developed for urban purposes.

Undertaking studies for Oxford Falls Valley would pre-empt Council's Local Planning Strategy and Local Housing Strategy

Action 15 of the Revised Draft North District Plan requires local councils to prepare local housing strategies to deliver 6-10 year housing supply, with capacity to contribute to the longer term 20 year strategic target for the district.

Council's local housing strategy will determine where growth should occur and where studies will be needed to realise these projects. It is not appropriate to pre-empt the outcome of this work by undertaking expensive studies in areas that have not previously been identified by Council as a preferred option for further urban development.

CONSULTATION

If Council resolves to comply with Gateway conditions and undertake Stage 2 of the Strategic Review or amend the Planning Proposal, a further non-statutory and statutory public consultation will be required to be undertaken.

TIMING

If Council resolves to comply with Gateway conditions and undertake Stage 2 of the Strategic Review, the timeframes are contingent upon the resourcing/funding and completion of the studies required by the Gateway Determination Conditions.

If Council resolves to withdraw the Planning Proposal, the matter would be considered again in the context of developing Council's Local Planning Strategy in the next 2-3 years.

FINANCIAL CONSIDERATIONS

Proceeding to undertake Stage 2 of the Strategic Review cannot be undertaken within Strategic Planning's budget and resources. Should Council resolve to proceed with this work it is recommended that it only be commenced subject to appropriate funding being received from the State Government.

SOCIAL CONSIDERATIONS

Urban release of the four sites in the Deferred Lands area was not generally supported by the 2009 Planning Assessment Commission Review Report because of, amongst things, their distance from key centres and from public transport, their inability to meet identified housing needs in the sub-region, and because of potential land use conflict with the Earth Satellite station in Oxford Falls West.

ENVIRONMENTAL CONSIDERATIONS

The 2009 Planning Assessment Commission Review Report raised significant concerns regarding potential impacts of urban development on the four sites, and more broadly, on the Narrabeen Lagoon catchment. Given the ecological and environmental value of the land within the Oxford Falls Valley and Belrose North areas, and the potential provision of residential development elsewhere in the LGA, the Stage 2 review is not considered to be necessary.

GOVERNANCE AND RISK CONSIDERATIONS

Council is currently the “relevant planning authority” for the Planning Proposal. The Minister could chose to appoint another relevant planning authority to move forward with the Gateway determination should he consider that Council is no longer willing or able to support the process.