

Planning Services

IRF19/424

Plan finalisation report

Local government area: Northern Beaches

1. NAME OF PLANNING PROPOSAL

Planning proposal to rezone Lot 1 DP1139826 Ralston Avenue, Belrose to R2 Low Density Residential, RE1 Public Recreation and E3 Environmental Management, apply a 600m² minimum lot size and 8.5m height limit (approximately 159 dwellings) (PP_2015_WARRI_001_00).

2. SITE DESCRIPTION

The planning proposal (**Attachment B**) comprises 136.62ha of land at Ralston Avenue, Belrose (Lot 1 DP1139826) of that lot, 17.06ha of land is proposed for planning control changes. The subject site is an undeveloped, irregularly shaped parcel of land and adjoins Garigal National Park to the north, west and south. Most of the site is covered in native bushland and is transversed in some areas by informal vehicle, bike and horse tracks.

The portion of the site proposed for low-density residential development is located west of residential housing in Ralston Avenue, Belrose and an electrical substation. The site is on a plateau, with the southern boundary partially marked by a road extending from Ralston Avenue to the substation.

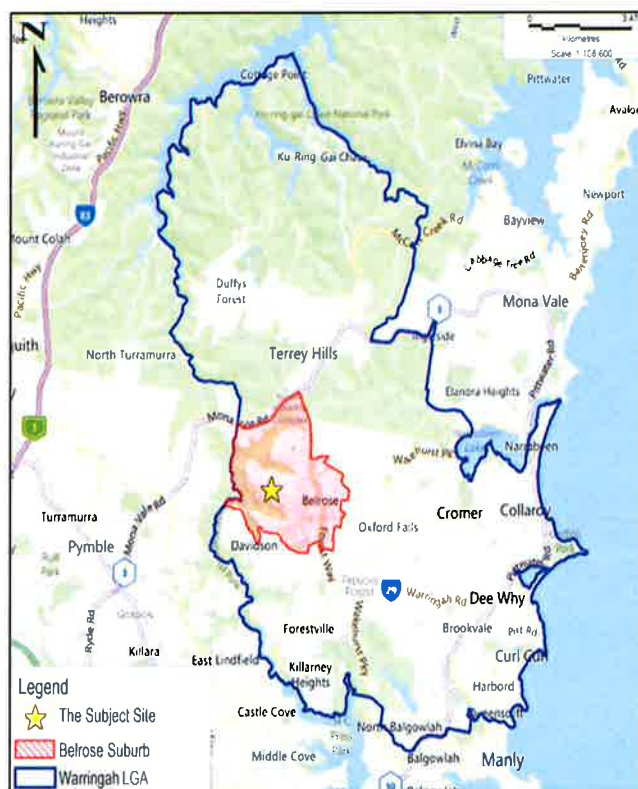


Figure 1: Regional context of site – Source: Social Impact Assessment

3. PURPOSE OF PLAN

The planning proposal seeks to rezone the site to:

- 16.76ha of R2 Low Density Residential, comprising approximately 159 lots (based upon a minimum lot size of 600m² and a maximum building height of 8.5m;
- 0.3ha of RE1 Public Recreation for a public park; and
- 119.05ha of E3 Environmental Management (87.5% of the site), to be retained as natural bushland with asset protection zones (APZs) and recreation trails adjacent to the future use of the residential land.

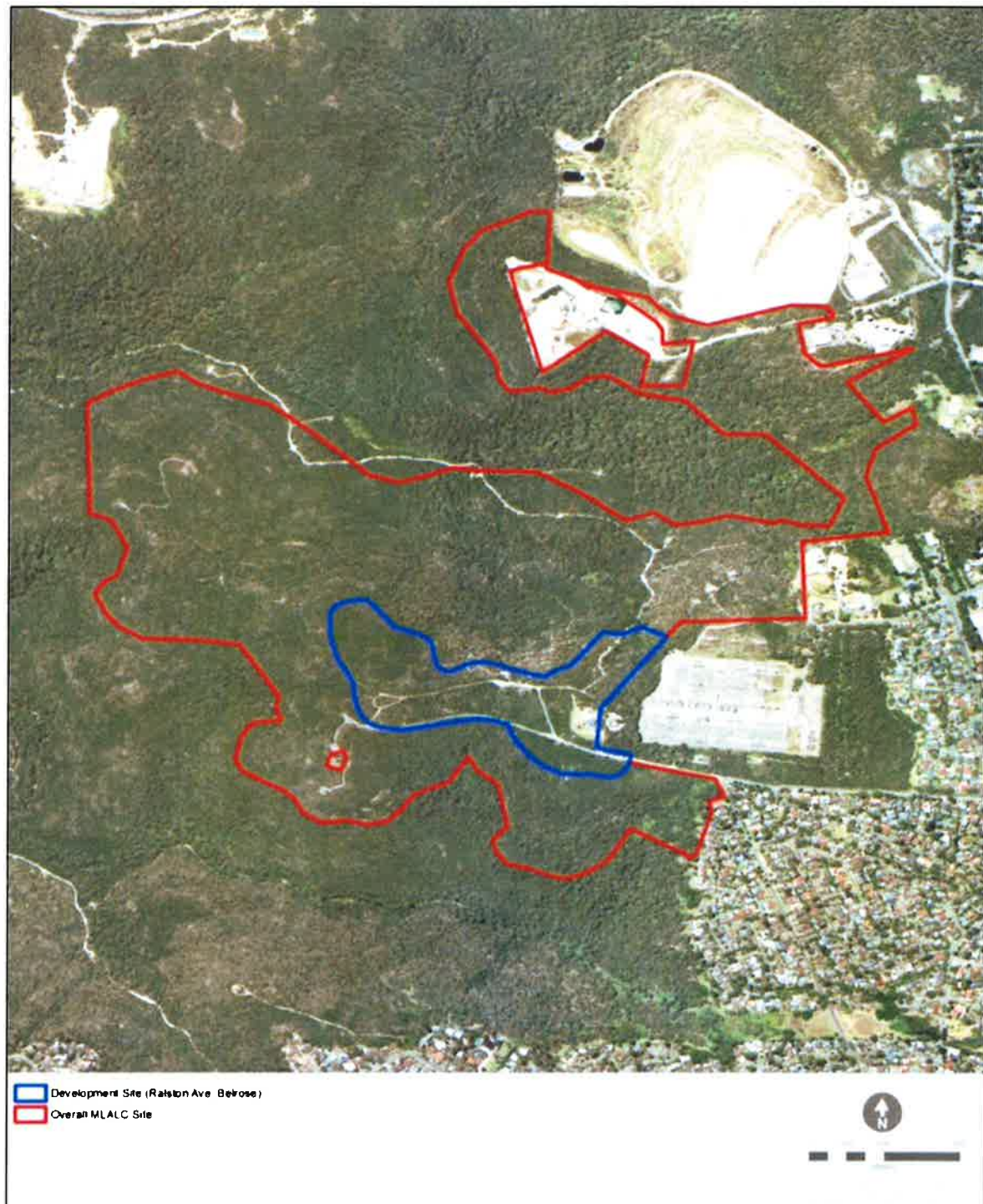


Figure 2: Satellite image of site - Source: Planning Proposal by Urbis - April 2013

The planning proposal is supported by an indicative subdivision plan showing the layout of the proposed lots and pocket parks adjacent to the substation. An APZ is outlined in yellow surrounding the subdivision.



Figure 3: Indicative subdivision plan Source: Northern Beaches Council Report to Ordinary Council Meeting Item NO. 10.4 - 19 December 2017

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Davidson State Electorate. The Hon Jonathon O'Dea MP is the State Member.

The site falls within the Mackellar federal electorate. The Hon Jason Falinski MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

5. GATEWAY DETERMINATION AND ALTERATIONS

On 23 July 2014, the former Joint Regional Planning Panel considered the request for a pre-Gateway review and unanimously recommended the proposed instrument should be submitted for a Gateway determination subject to conditions.

The Gateway determination issued on 28 January 2015 (**Attachment E**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 12 May 2017 (**Attachment F**) in response to an extension of time requested by Council.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 27 May 2017 to 25 June 2017.

A total of 243 submissions were received from the community, with most (84%) objecting to the proposal mainly due to environmental and traffic impacts, and bushfire risks. Some respondents supported the proposal (2%), while others expressed support subject to conditions (4%). The remaining responses (10%) were neutral or were unrelated to the planning proposal.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the NSW Rural Fire Service (RFS) and the Office of Environment and Heritage (OEH) in accordance with the Gateway determination and has also consulted with Sydney Water, TransGrid, Roads and Maritime Services (RMS) and Ausgrid (**Attachment G**).

The planning proposal was not supported by:

- RFS due to the unacceptable threat to human life and property from bushfire;
- the OEH and NSW National Parks and Wildlife Service (NPWS) due to the significance of impacts to threatened species and native vegetation communities and the uncertainty regarding the extent, management and mitigation of these impacts; and
- TransGrid due to the unacceptable risks to the safe and effective access, maintenance and operation of TransGrid's Sydney East substation adjoining the subject land.

8. COUNCIL RESOLUTION

On 19 December 2017, Council unanimously resolved to recommend the Minister for Planning's delegate not make the plan to enable residential development on the subject land (**Attachment H**). Council's decision is based on 15 reasons; notably, the planning proposal has:

- no strategic merit due to inconsistencies with directions, aims and priorities to protect the environment and increase resilience to natural hazards in A Plan for Growing Sydney and the Greater Sydney Commissions' Revised Draft North District Plan and Draft Greater Sydney Region Plan; and
- no site-specific merit due to impacts on biodiversity and threatened species, the adjoining national park, bushfire risk, the proximity of the Sydney East substation and financial arrangements for infrastructure provision.

9. ASSESSMENT

Independent Planning Commission Referral

On 21 December 2017, the Department referred the planning proposal under the former section 23D(1)(b)(i) (now section 2.9) of the *Environmental Planning and Assessment Act 1979* to the Independent Planning Commission (IPC) (**Attachment I**).

The proposal was referred to the IPC as a result of Council's resolution to recommend the Minister for Planning's delegate not make the plan, concerns raised by the proponent about the assessment of the planning proposal by Council and the RFS, and the proponent's request to have an alternate planning proposal authority appointed.

In preparing advice for the Department, the IPC met with the Department, the proponent, Council, RFS, OEH and TransGrid NSW. Further information on the matters raised at these meetings can be found in the IPC's report (**Attachment J**).

The Department asked the IPC to provide a recommendation on whether the proposed instrument should be made and, as part of its consideration, seek independent expert advice on bushfire risk.

Independent review of bushfire risk

The IPC engaged Kleinfelder Australia Pty Ltd (Kleinfelder) to undertake an independent review of the bushfire risk on the subject land in relation to the planning proposal. In April 2018, Kleinfelder provided the IPC with a bushfire assessment.

The assessment concluded that the proposal did not meet the objectives of section 9.1 Direction 4.4 Planning for Bushfire Protection and the aims and objectives of *Planning for Bushfire Protection 2006* due to:

- the risk to life and property on the future residential development from the bushfire risk not being adequately addressed;
- the landscape characteristics that elevate the bushfire risk are also the same characteristics that constrain the development design;
- the site access not being adequately considered; and
- the high-voltage power lines and easements being a significant impediment to the proposal.

The IPC decided to set aside the Kleinfelder review and secure another independent review of the bushfire risk on the subject land due to the proponent's concerns about the perceived or actual conflict of interest.

In September 2018, the IPC engaged Australia Bushfire Assessment Consultants Pty Ltd (ABAC), who on 15 October 2018, provided the IPC with its bushfire review. The review concluded that the possible risks posed by surrounding bushfire-prone land to the area of land proposed to be rezoned will be proportionally greater than the likely ability of the recommended range of bushfire protection measures to mitigate those risks. The review recommended that unless and until all potential risks are mitigated or lessened to an acceptable level, the planning proposal should not be supported.

On 18 December 2018, ABAC provided the IPC with an addendum to its review (**Attachment K**), which concluded that the additional documentation did not materially alter the position in its correspondence to the IPC dated 12 October 2018.

Despite the technical information provided on behalf of the proponent, ABAC was unable to draw a clear conclusion that the possible risks posed by surrounding bushfire-prone land to the subject land will not be proportionally greater than the likely ability of the range of bushfire protection measures to mitigate such risks.

IPC review and recommendations

In its report dated 22 January 2019 (**Attachment J**), the IPC accepted the findings of RFS and the ABAC Independent review and considered the planning proposal presents unreasonable risks associated with the threat of bushfires.

The IPC also accepted the findings of Council and OEH and has stated it is unable to support the planning proposal due to the likely to significantly impact a number and range of threatened species and native vegetation communities and that there is uncertainty regarding the extent, management and mitigation of these impacts.

The IPC considered the issues raised by TransGrid in relation to the power station and concluded that potential impacts of the planning proposal on the safe and effective maintenance and operation of TransGrid's infrastructure were not acceptable from a public

interest perspective and may elevate the risk to firefighters and those seeking to evacuate the subject land.

The IPC outlined that the proposal has not demonstrated consistency with the objectives of section 9.1 Direction 4.4 Planning for Bushfire Protection 'to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas'. The IPC also outlined that the proposal also demonstrates inconsistencies with *Direction 2.1 Environment Protection Zones* due to the extent of the impacts to biodiversity and threatened species and the threatened ecological community.

The IPC concluded the planning proposal should not proceed and the subject land should not be rezoned for residential development, finding it presents an unreasonable risk to human life and property due to the level of risk associated with the threat of bushfire, and the ongoing uncertainty regarding the impacts on biodiversity and essential public infrastructure.

Section 9.1 Directions

Direction 4.4 Planning for Bushfire Protection

The objectives of *Direction 4.4* are to protect life, property and the environment from bush fire hazards and to encourage the management of bush fire prone areas. The direction applies to all local government areas where Council has provided a bush fire prone land map. As the subject site is situated adjacent to land identified as bush fire prone, the planning proposal must:

- have regard to *Planning for Bushfire Protection 2006*;
- introducing controls that avoid placing inappropriate developments in hazardous areas; and
- ensuring that bushfire hazard reduction is not prohibited within the APZ.

Two separate bushfire reviews, an addendum to a review, and advice received from RFS Council and TransGrid concluded that the planning proposal was incompatible due to the areas bush fire constraints and its close proximity to critical state infrastructure.

The Department has reviewed the recommendation provided by the IPC, the bushfire reviews, and both RFS and Council's comments regarding bushfire risk. The Department acknowledges that there are unreasonable risks and unresolved issues associated with bushfire threats to human life, critical infrastructure and the environment and therefore considers the planning proposal is inconsistent with the objectives of section 9.1 Direction 4.4 Planning for Bushfire Protection.

Direction 2.1 Environment Protection

The objectives of Direction 2.1 are to protect and conserve environmentally sensitive areas. The direction applies to all relevant planning authorities when a relevant planning authority prepares a planning proposal. As this proposal is situated on land identified for environment protection purposes, this direction applies and therefore:

- consideration must be given to the objectives of this direction;
- the proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas; and
- the proposal must not reduce the environmental protection standards that apply to the land.

The proponent's ecological assessment identified that the planning proposal would result in direct and indirect impacts, which would adversely impact a number of threatened flora and fauna species including EEC.

Both Council and OEH have outlined that they cannot support the proposal in its current form as:

- the environmental impacts have not been adequately addressed;
- the planning proposal could result in serious and irreversible impacts on protected threatened species and threatened ecological communities;
- biocertification for this site has not yet been achieved; and
- the proponents offsetting arrangements are unclear.

The Department has considered the recommendation provided by the IPC and the advice received by Council and OEH. The Department acknowledges that the proposal presents uncertainty around the extent and nature of the impacts to biodiversity and therefore considers the planning proposal is inconsistent with the objectives of section 9.1 Direction 2.1 Environmental Protection.

State environmental planning policies

The proposal demonstrates inconsistencies with *State Environmental Planning Policy No 19 – Bushland in Urban Areas* as it contravenes the objectives of the SEPP by proposing to remove large areas of bushland containing endangered species. The proposal also demonstrated inconsistencies with *State Environmental Planning Policy (Infrastructure) 2007* as outlined by Council and TransGrid, as the subject site is located directly adjacent to essential public infrastructure, which supplies bulk power to the Sydney population.

Regional and district plans

The proposal demonstrates a lack of strategic merit and is inconsistent with directions, aims and priorities in the Greater Sydney Commission's *Greater Sydney Region Plan* and *North District Plan*.

Greater Sydney Region Plan

The planning proposal demonstrates inconsistencies with *Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced*, on the basis that the amount of land that has been proposed to be cleared and the threat it imposes on native species.

The planning proposal demonstrates inconsistencies with *Objectives 1-4 with regard to a city supported by infrastructure* given that the high risks to life and property associated with developing the subject site adjacent to essential public infrastructure owned by TransGrid.

North District Plan

The planning proposal is inconsistent with *Planning Priority N1 – Planning for a city supported by infrastructure* and *Planning Priority N3 – providing services and social infrastructure to meet peoples changing needs*, due to the risks associated with developing the subject site adjacent to essential public infrastructure owned by TransGrid.

The planning proposal is also inconsistent with *Planning Priority N15 – Protecting and Enhancing Bushland and Biodiversity*, due to the amount of land has been proposed to be cleared and the threat it imposes on native species.

It is considered that the planning proposal does not give effect to the district plan as required under clause 3.8 of the Act.

10. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to not make the draft LEP under clause 3.36(2)(b) of the Act on the basis that:

- The proposal has not demonstrated consistency with *Direction 4.4 Planning for Bushfire Protection* or *Direction 2.1 Environment Protection Zones*, or State, regional and district plans; and
- The proposal presents unacceptable risk to human life, property, critical infrastructure, and poses significant impact to biodiversity and threatened species.

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