

Post-Exhibition Report – PP-2022-3802

To rezone land at Patyegarang, Morgan Road, Belrose for residential development, a cultural centre and environmental conservation (approximately 71 hectares) under the Warringah LEP 2011

1 Introduction

The planning proposal is at the post exhibition stage, which is the last stage before an LEP may be made and finalised. The Sydney North Strategic Planning Panel (the Panel) determined that the proposal had strategic and site specific merit on 21 December 2022. Subsequently, a Gateway assessment was undertaken, and a Gateway determination was issued on 9 June 2023 for the proposal to proceed, subject to conditions. Consultation with Agencies and the community, as required by the Gateway determination conditions, has now been completed.

The purpose of this report is to provide a summary of the key matters raised by members of the public, Northern Beaches Council (Council), and public agencies, during, and after, the public exhibition of the planning proposal (**Attachment A**) for 'Patyegarang' (the site).

The report includes a recommendation made by the Planning Proposal Authority (PPA) team, in its role supporting the Panel. The PPA team recommend that the proposal be submitted to the Department of Planning, Housing and Infrastructure (The Department) for finalisation subject to it being updated to reflect the PPA team recommendations outlined in **Section 5** of this report.

Following a decision of the Panel, the planning proposal will be sent to the Department as the Local Plan Making Authority (LPMA) to determine whether to finalise the proposal.

Element	Description
Date of request to exhibit PP	October 2022
Date of panel determination on planning proposal	21 December 2022
Planning Proposal no.	PP-2022-3802
LGA	Northern Beaches
LEP to be amended	Warringah Local Environment Plan (2011) [Note – site currently deferred from WLEP2011 and sits within Warringah Local Environmental Plan 2001]
Address	Morgan Road, Belrose
Brief overview of the timeframe/progress of the planning proposal	5 August 2022 – Northern Beaches Development Delivery Plan approved by the Minister.

Element	Description
	<p>October 2022 – Metropolitan Local Aboriginal Land Council (MLALC) submitted the planning proposal for 'Patyegarang' (Lizard Rock), Belrose for an Independent Aboriginal Review in October 2022 to the Panel.</p> <p>21 December 2022 – Panel determines the planning proposal has strategic and site-specific merit to proceed, subject to conditions, including:</p> <ul style="list-style-type: none"> • dwellings are to be capped at 450; • provision of 10% affordable housing; • final zoning boundaries are to be resolved to maximise biodiversity values on site; and • prior to exhibition of the planning proposal, a site specific DCP is to be finalised in consultation with the Department and Council. <p>29 May 2023 – Panel review the amended Planning Proposal and determines that the Planning Proposal should be submitted to the Department for Gateway Assessment, as the Panel's original conditions have been satisfied.</p> <p>9 June 2023 - Department issues Gateway Determination for the proposal.</p> <p>4 September 2023 – Panel determines that the planning proposal, as revised, adequately responds to Gateway Conditions, and should go on public exhibition.</p> <p>26 September – 7 November 2023 – Public exhibition for 42 working days.</p> <p>3 July 2024 – PPA team requests further information and amended Planning Proposal addressing community, Council and Agency submissions.</p> <p>25 July 2024 – amended Gateway Determination issued with finalisation date of 31 March 2025.</p> <p>14 August 2024 – Amended Planning Proposal and supporting documents submitted by MLALC to PPA team.</p> <p>30 September 2024 – Updated Draft DCP responding to Council's exhibition feedback submitted to PPA team, and provided to Council.</p> <p>6 November 2024 – Consolidated Planning Proposal package submitted by MLALC to PPA team.</p>
Finalisation date required by Gateway Determination	31 March 2025
Department contact:	Louise McMahon, Director Planning Proposal Authority

1.1 The Site and local context

The site is an amalgamation of 22 allotments and the 2 roads on site with a total area of 71ha.

All allotments are in MLALC ownership totaling a site area of 67.7ha.

The site predominately comprises disturbed bushland and is located east of Forest Way in the suburb of Belrose. The site has Aboriginal cultural significance with identified Aboriginal heritage items located on the site, including rock engravings on Lizard Rock.

The site is in the suburb of Belrose and adjoins Oxford Falls to the east. To the North of the site are large residential land holdings with cleared areas and a range of buildings. To the South and West is a mix of residential dwellings, recreation areas and seniors housing. To the East is natural vegetation, bushland and recreation areas.

The site is approximately 20km north of the Sydney Central Business District and approximately 6.5km northeast from Chatswood CBD. The site has satisfactory access to a variety of services and retail facilities, including Warringah Mall (8.5 km), Forestway Shopping Centre (3.4 km) and Glenrose Shopping Centre (3km). A neighbourhood supermarket is located approximately 800m from the site's western boundary. There are 30 public and private schools within a 5km radius of the site. The Frenchs Forest Health and Education Precinct is 6km to the south and connects the community to health and education services.



Figure 1 Subject site (source: Nearmap 2023)

1.2 Planning Proposal

Table 1 – Overview of planning proposal

Element	Description
Site Area	71 hectares in Morgan Road Belrose
Site Description	The site predominately comprises disturbed bushland and is located east of Forest Way in the suburb of Belrose. The site has Aboriginal cultural significance with identified Aboriginal heritage items located on the site, including rock engravings on Lizard Rock.

Element	Description
Post-Exhibition Proposal summary	<p>Planning proposal seeks to rezone land owned by the Metropolitan Local Aboriginal Land Council (MLALC) to implement the Northern Beaches Development Delivery Plan established under Chapter 3 of State Environmental Planning Policy (Planning Systems) 2021 by:</p> <ul style="list-style-type: none"> • Providing appropriate zoning to deliver up to 450 dwellings with a range of small, medium to large residential lot sizes; • Protecting significant biodiversity and cultural values on the site by formalising the ongoing environmental management and bushfire protection mechanisms in zoning and LEP/DCP controls; • Transferring the Site from Warringah Local Environmental Plan 2000 to Warringah Local Environmental Plan 2011 and implementing standard instrument zones R2 (low-density residential), C2 (environmental conservation) and RE2 (private recreation); • Introducing maximum building heights (8.5 metres) for parts of the site; • Introducing minimum lot sizes (200sqm, 450sqm, 600sqm); • Introduce a zone boundary clause, as per the Standard Instrument Order clause 5.3 in the R2 and RE2 zoned land; • Introducing additional permitted uses within the RE2 Private Recreation zone to enable environmental management works, stormwater services, APZ and bushfire works, utilities and servicing works where required; • Introducing dual occupancies as an additional permitted use within the R2 low density residential zone.
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> • Northern Beaches Development Delivery Plan established under Chapter 3 of State Environmental Planning Policy (Planning Systems) 2021; • The Greater Sydney Region Plan – A Metropolis of Three Cities (Region Plan) (2018); • North District Plan (2018); • Housing Productivity Infrastructure Contributions 2023; • Northern Beaches Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS); • Section 9.1 Ministerial Directions; • State Environmental Planning Policy (Biodiversity and Conservation) 2021; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • State Environmental Planning Policy (Regions – Eastern Harbour City) 2021; • State Environmental Planning Policy (Housing) 2021; • Warringah Local Environmental Plan 2000; and • Warringah Local Environmental Plan 2011.

The planning proposal (**Attachment A** and **Table 1**) seeks to amend the Warringah LEP 2011 per the changes in **Table 2** below. **Table 2** outlines the proposal as exhibited and then post-exhibition changes made by the proponent.

Table 2 – Current and proposed controls

Control	Current	Exhibited Planning Proposal – Warringah LEP 2011	Post-Exhibition Proponent Proposed – Warringah LEP 2011
Application	Warringah LEP 2000 controls continue to apply to land identified as 'deferred matter' in Warringah LEP 2011.	Remove 'deferred matter' status in Warringah LEP 2011.	Remove 'deferred matter' status in Warringah LEP 2011.
Zone	Locality B2 – Oxford Falls under Warringah LEP 2000 Warringah LEP 2000 uses localities and permissible uses.	R2 - Low Density Residential (51 ha or 68.6% of the site) C2 - Environmental Conservation (19.8 ha or 28% of site) RE2 – Private Recreation (3.5 ha or 4.7% of the site)	R2 - Low Density Residential (45.6 ha or 61.34% of the site) C2 - Environmental Conservation (22.1 ha or 31% of site) RE2 – Private Recreation (6.6 ha or 8.9% of the site)
Additional permitted uses	N/A	<ul style="list-style-type: none"> RE2 Private Recreation zone: environmental management works, stormwater services, APZ and bushfire works; and R2 Low-Density Residential Zone: dual occupancy dwellings 	<ul style="list-style-type: none"> RE2 Private Recreation zone: environmental management works, stormwater services, APZ and bushfire works; and R2 Low-Density Residential Zone: dual occupancy dwellings and a minimum lot size of 600m²
Zone Boundary Clause	N/A	N/A	Introduce a zone boundary clause, as per the Standard Instrument Order clause 5.3 for zones R2 and RE2. The relevant distance where this Clause applies between zones would be 15m.
Maximum height of the building	N/A	8.5 m	8.5 m
Floor space ratio	N/A	N/A	N/A

Control	Current	Exhibited Planning Proposal – Warringah LEP 2011	Post-Exhibition Proponent Proposed – Warringah LEP 2011
Minimum lot size	1 dwelling per 20 hectares.	1 dwelling per 200m ² 1 dwelling per 450m ² 1 dwelling per 600m ²	1 dwelling per 200m ² 1 dwelling per 450m ² 1 dwelling per 600m ²
Number of dwellings	0	Maximum cap for 450 dwellings using a local clause.	Maximum cap for 450 dwellings using a local clause.
Affordable Housing Contribution	N/A	Local Provision in the LEP. Rate not determined	Affordable housing to be included as a Clause in the LEP, but rate to be based on project feasibility.
Development Control Plan	N/A	Draft DCP prepared and exhibited.	Draft DCP updated to respond to Council feedback from exhibition. Proponent has requested that should Council oppose the DCP, it could be made by the Minister to apply to the site.
Number of jobs	N/A	125	125

The updated proposal discussed in this report was submitted by the Proponent on 14 August 2024 and further updated in September 2024 with an amended draft DCP responding to Council's feedback in its earlier submission during public exhibition. A final consolidated Planning Proposal, incorporating all relevant appendices including additional technical studies, and responses to community and agency feedback was provided in early November 2024. It is noted that further changes to the proposal may take place prior to submitting the planning proposal to the LPMA for finalisation, subject to the recommendation of Panel as PPA.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.3 Mapping

The below maps show the current Warringah LEP 2011 planning controls on the left, and the post-exhibition proponent proposed controls on the right. The proposal, as amended by the proponent post-exhibition, includes the following maps.

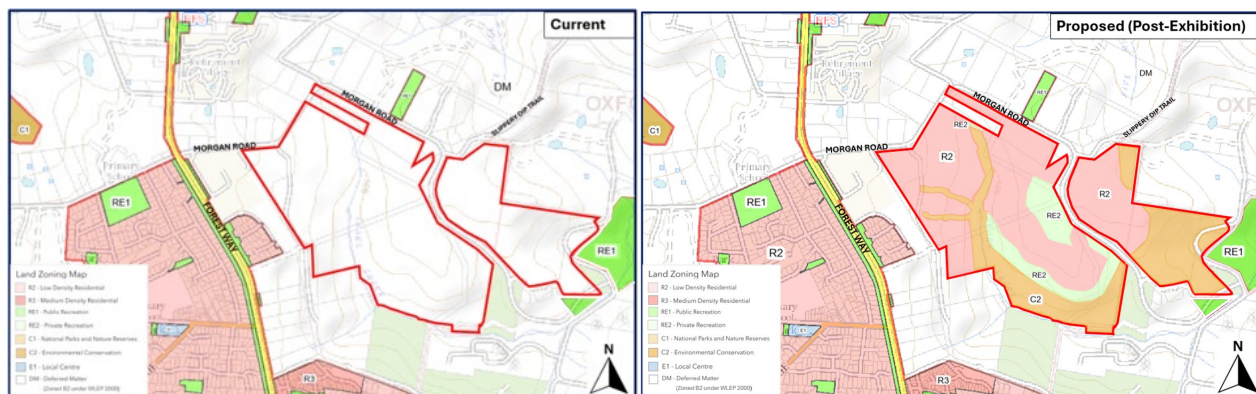


Figure 2. Current and proposed zoning (source: Spatial viewer 2024)

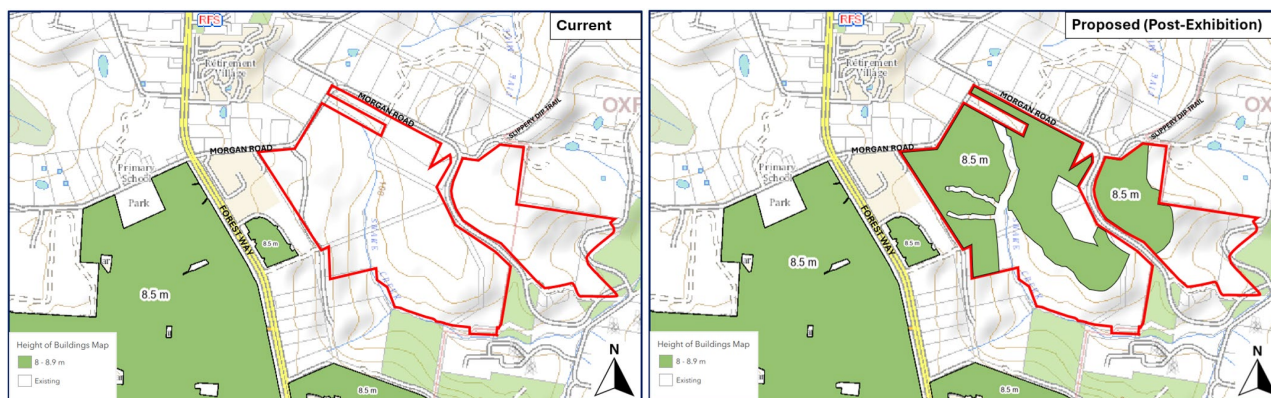


Figure 3. Current and proposed height of buildings map (source: Spatial viewer 2024)

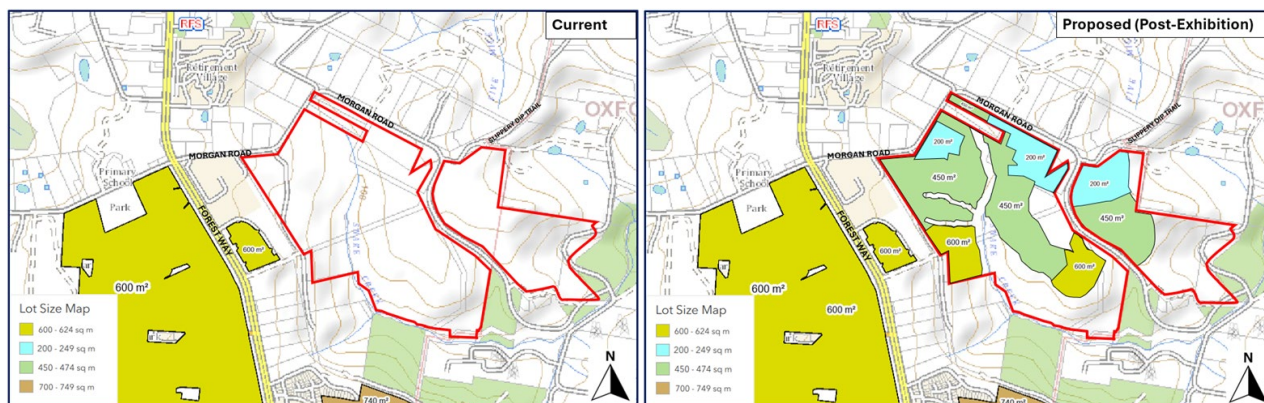


Figure 4: Current and proposed Lot Size map (source: Spatial viewer 2024)

1.4 Aboriginal Land Planning Pathway

Land claimed under the Aboriginal Land Rights Act 1983 (ALR Act) can be considered for inclusion in a Development Delivery Plan (DDP) prepared by or on behalf of a Local Aboriginal Land Council (LALC) under Chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 (SEPP).

A DDP is the ongoing link between the requirements of the ALR Act, such as preparation of a Community, Land and Business Plan (CLBP), and the planning and development decisions that occur under the provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act). A

DDP forms part of a suite of planning mechanisms to assist Local Aboriginal Land Councils (LALCs) achieve economic self-determination for their communities and deliver social, economic and environmental benefits as compensation for the loss and dispossession of their land.

A DDP formally recognises the development pipeline for a LALC and must be considered by planning authorities in key planning assessment processes, including Planning Proposals and development applications. Under Chapter 3, this applies to all land owned by an Aboriginal Council, not just the areas identified in the map below. The Northern Beaches DDP was prepared under this framework and approved by the Minister in August 2022, the first full DDP in the state.

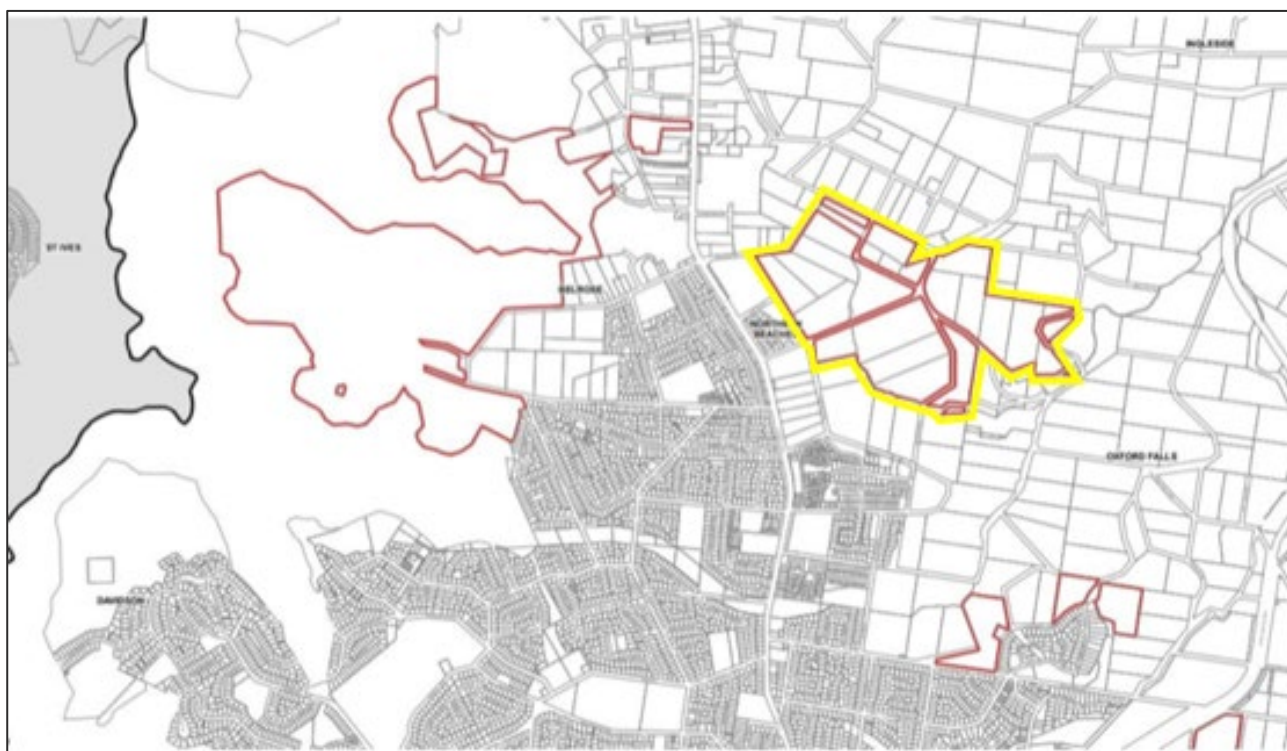


Figure 5: Land Application Map, showing MLALC land subject to Chapter 3 of the Planning Systems SEPP, subject site highlighted in yellow (NSW Legislation)

As part of the strategic process in preparing and finalising the DDP, a comprehensive strategic assessment across the 621 hectares of land owned by MLALC in the Northern Beaches LGA was undertaken to assess constraints and opportunities for development. This peer-reviewed assessment investigated the development potential of each of the land parcels, looking at matters such as biodiversity values, heritage values, bushfire risk, and infrastructure needs.

Six of the land parcels were subsequently included in the Aboriginal Lands SEPP and assessed further within the Northern Beaches Aboriginal Land Development Delivery Plan (DDP), with remaining land parcels to be conserved. The subject 71-hectare site (Patyegarang) was the only site identified and endorsed by the MLALC members and NSW ALC for land dealing, as the land was considered most suitable for redevelopment in the short and medium term.

Once a DDP has been prepared and the land in question is identified in the SEPP, a LALC may seek an independent review by the relevant Strategic Planning Panel instead of submitting a planning proposal to the local council. The MLALC chose to take this approach and submitted the planning proposal for 'Patyegarang' (Lizard Rock), Belrose for an independent review in October 2022.

1.5 Independent Review by Planning Panel

On 21 December 2022, the Sydney North Strategic Panel (the Panel) considered the proposal, heard from Northern Beaches Council (Council) and the MLALC, and made the unanimous decision that the planning proposal has both strategic and site-specific merit to be submitted for a Gateway determination, with the following amendments and clarifications:

- dwellings are to be capped at 450;
- provision of 10% affordable housing;
- final zoning boundaries are to be resolved to maximise biodiversity values on site; and
- prior to exhibition of the planning proposal, a site specific DCP is to be finalised in consultation with the Department and Council.

The panel's determination and reasons for its decision are provided in **Attachment B**. The panel appointed itself as the planning proposal authority (PPA).

On 29 May 2023, the Panel majority determined that the Planning Proposal should be submitted to the Department for Gateway Assessment. The Panel met with the Department to be briefed on both the Proponent's revised Planning Proposal, and the Independent Review prepared by Element Environment Pty Limited which addressed the Panel's conditions in its decision on the strategic and site-specific merits of the Planning Proposal in December 2022.

The Panel noted the Independent Review had found that, subject to further assessment of Conditions 2 and 3, the Planning Proposal had sufficiently addressed the December 2022 Panel's conditions for the proposal to proceed to Gateway.

The panel's determination and reasons for its decision are provided in **Attachment B1**. The proposal was submitted to the Department for a Gateway determination.

1.6 Gateway determination

The Gateway determination issued on 9 June 2023 (**Attachment C**) determined that the proposal should proceed subject to the following conditions:

- Adopt an appropriate residential zone, rather than proposing controls subject to final selection of a zone to be applied to the site;*
- address how the 450 dwelling cap will be achieved so it is an effective cap, rather than an aspirational cap;*
- the developable area on the Land Zoning Map should reflect the physical constraints of the site through the following amendments:*
 - review the zoning of the Lizard Rock sacred site;*
 - review the zoning for the northwest portion of the Snake Creek riparian corridor including tributaries and retained vegetation identified on the indicative structure plan;*
 - proposed bushfire Asset Protection Zones (APZ) should have a zone that reflects the role of the APZ, given the indicative structure plan suggests the APZs are open space; and*
 - investigate appropriate zone options to identify the proposed open spaces.*
- introduce a discussion of how the proposal will deliver affordable housing in a manner consistent with the Northern Beaches Council Affordable Housing Contribution Scheme;*

- e. *introduce minimum lot sizes through LEP mapping, rather than the Development Control Plan;*
- f. *if the planning proposal adopts the R2 zone, Additional Permitted Uses for seniors housing and community facilities should be removed, otherwise provide further justification and reasoning to support the introduction of these APUs;*
- g. *clarify references to the B1 Local Centre zone that are not depicted on any maps; and*
- h. *prepare a site-specific Development Control Plan.*

The Gateway determination was altered on 25/07/2024 to permit an extension of the LEP completion timeframe (**Attachment C1**).

The Gateway determination (as altered) identifies that the proposal is to be finalised before 31 March 2025. All conditions of the Gateway determination (as altered) have been met (see **Attachment D**).

On 1 September 2023 the Panel, as PPA, majority determined that:

- The planning proposal as revised (Version 3 July 2023) and submitted is suitable for public exhibition; and
- Agency and public consultation is now warranted to provide further advice and comment on the provisions and objectives of the planning proposal.

The Panel noted the Department of Planning and Environment's (now DPHI) Panel Gateway Assessment Report identifies that all the relevant Gateway determination conditions can be met and the majority of the Panel concurs.

The panel's determination and reasons for its decision are provided in **Attachment E**.

2 Community Consultation

2.1 Pre-exhibition Consultation

As shown in **Attachment F**, the land affected by this planning proposal was subject to significant pre-exhibition consultation through the detailed DDP and subsequent processes. The DDP, SEPP and pre-lodgement consultation process included liaising with Council, relevant government agencies and the community. Feedback from this process then incorporated into the Planning Proposal submitted to the Panel for Independent Aboriginal Review in October 2022.

2.2 Public Exhibition

On 1 September 2023 the Panel recommended the exhibition of the planning proposal (**Attachment E**). In accordance with the Gateway determination, the planning proposal and supporting material were publicly exhibited on the NSW Planning Portal for 42 working days, from 26 September 2023 to 7 November 2023.

3 Submissions

3.1 Submissions during exhibition

A total of 3,665 submissions were received on the proposal from individuals and organisations including government, environmental organisations, local societies, and advocacy groups. Submissions from the community consisted of 1,808 Public Portal submissions, 1,317 Form Letter

submission (submitted via the Local Member Michael Regan MP), 168 Email submissions, and 355 Hardcopy Letter submissions.

These submissions include:

- 15 Group/Organisation submissions from the community
- 3,633 Individual submissions from the community, including
 - 1 submission from Michael Regan MP, Member for Wakehurst
 - 1 submission from Sophie Scamps MP, Federal Member for Mackellar
 - 1 submission from former member for Pittwater, Rory Amon MP
- 10 Government Agencies provided a total of 16 submissions. BCS, RFS, SES, Sydney Water, and TfNSW submitted multiple submissions.
- 1 Council Submission from Northern Beaches Council.

Of the individual submissions, 98% objected to the proposal. Submissions that were in favour of the proposal, those that express mixed views, or which do not clearly express a sentiment totalled 2% of all submissions.

Approximately 36% percent of submissions were hard-copy form letters highlighting concerns but lacking specific details. Another 10% of submissions were form letters raising a series of concerns relating to environmental impacts and loss of bushland, bushfire, implications for traffic, and raising questions about broader strategic planning implications.

A table outlining the PPA team and Proponent's response to submissions is provided as **Attachment H and Attachment K**. A report summarising the community consultation outcomes was prepared by Mecone and is provided as **Attachment G**. The proponent's response to the community submissions is provided as **Attachment M and M1**.

3.1.1 Community submissions supporting the proposal

Respondents expressing support represent 1.8% of total submissions. Submissions containing mixed views or no clearly expressed support/objection, are categorised as 'neutral' (0.3% of total). Reasons for supporting the proposal included:

- *Support for the preservation of aboriginal cultural heritage and proposed cultural centre;*
- *Support for the rezoning enabling additional housing in the area given the limited housing supply in the Northern Beaches Council; and*
- *Support for the proposal's opportunity for self-determination by the MLALC.*

Submissions in support included a submission of support from NSW Council of Social Services (NCOSS) who supported for a range of reasons including:

- *Increased housing supply, housing affordability and diversity;*
- *Community and environmental benefits including pedestrian and cycling paths and environmental management; and*
- *Opportunity for broader community to engage with and better understand Aboriginal cultural heritage through protection of Aboriginal heritage items and a new cultural community facility.*

3.1.2 Community submissions objecting to and/or raising issues about the proposal

A total of 3,633 individual and 15 groups submissions were received from community members, primarily residents from the Northern Beaches area. Key issues and concerns raised by the community included:

- Loss of bushland and natural habitat, and negative impacts on waterways;
- Proposed location is within bushfire prone land and will increase bushfire risk;
- Lack of infrastructure and services to support the proposed development and its unsuitability for development;
- Increased traffic and congestion;
- Poor alignment with the strategic planning framework and a precedent for rezoning and development;
- Potential loss of cultural heritage; and
- Scale of the proposed development.

3.1.3 Submissions from Agencies and Council

In accordance with the Gateway Determination, the following agencies were consulted:

Agency Consulted	
Greater Cities Commission (GCC)	Submission received
Transport for NSW (TfNSW)	Multiple submissions received
NSW State Emergency Service (SES)	Multiple submissions received
NSW Rural Fire Service (RFS)	Multiple submissions received
Fire and Rescue NSW	No submission received
NSW Environment and Heritage (now Biodiversity, Sciences and Conservation Group and Heritage NSW in DCCEWR)	Multiple submissions received
NSW Environment Protection Authority	No submission received
Commonwealth Department of Climate Change, Energy, the Environment and Water	No submission received
Natural Resource Access Regulator	No submission received
Department of Education	No submission received
NSW Health – Northern Local Health District	No submission received
Sydney Water	Multiple submissions received

Jemena	Submission received
Ausgrid	Submission received
NBN Co	No submission received
Crown Lands NSW	Submission received
Heritage NSW	Submission received

The agencies submissions are provided in full at **Attachment J**.

The Greater Cities Commission supported the planning proposal and considered that it has strategic merit and is generally consistent with relevant objectives and planning priorities outlined in the region and district plans, and progresses the strategic potential identified in the Northern Beaches Development Delivery Plan (2022).

Ausgrid, Crown Lands, Jemena and Sydney Water raised no objection to the proposal subject to appropriate consultation and approvals being obtained at development application stage.

BCSG, Heritage NSW, SES and TfNSW's submissions raised a number of matters that are discussed in detail in **Section 3.2** of this report, with recommendations from the PPA team contained in **Section 3.4**. It is noted that BCSG and RFS continue to object to the planning proposal in its current form.

A submission was received from Northern Beaches Council, the submission is provided in full at **Attachment I**. Council's submission raised multiple concerns with the proposal, which are discussed in detail in **Section 3.2** of this report.

The Proponent's response to agency and Council submissions is provided as **Attachment M1**. A table outlining the PPA team's response to agency and Council submissions is provided as **Attachment K**.

The PPA team's recommendations to address outstanding agency and Council concerns are outlined in **Section 5** of this report.

3.1.4 Representation from Parliamentary Members

There have been numerous representations from both State and Federal members of parliament and Questions on Notice to the Minister of Planning and Public Spaces.

The Hon. Dr Sophie Scamps MP Federal Member for Mackellar wrote to the Department during the public exhibition to advise that she does not support the proposal on the following grounds:

- The proposal is inconsistent with existing planning policies, including the Greater Sydney Region Plan, North District Plan and the Northern Beaches LSPS.
- The proposal represents an unacceptable fire risk to the community.
- Considers the proposal environmental destructive and carbon intensifying.
- Proposal will exacerbate the already significant flooding issues on the Wakehurst Parkway.

The Hon. Michael Regan MP State Member for Wakehurst wrote to the Department during the public exhibition to advise that he does not support the proposal on the following grounds:

- Concern over mistruths provided by MLALC about the site in the public domain.
- Considers rezoning the site to R2 for residential development not to be in the public interest,

- The risk to public safety in a bushfire emergency makes the rezoning unviable and irresponsible.
- The ecological and environmental impact of the rezoning is too high, and
- The rezoning is not consistent with good strategic planning.

The Hon. Rory Amon MP, former state Member for Pittwater wrote to the Department during the public exhibition to advise that he does not support the proposal on the following grounds

- Concern over loss of pristine bushland and wildlife habitat,
- Significant bushfire risk to people, wildlife and property, and
- Lack of existing infrastructure and services in the Belrose vicinity.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

3.2 Key Issues from submissions

In summary, the concerns raised in the community and agency submissions include:

- Environment and Biodiversity
- Bushfire and evacuation
- Aboriginal Cultural Heritage
- Flooding and overland flow
- Infrastructure capacity
- Dwelling density and layout
- Strategic Planning Framework and draft DCP

3.2.1 Issue No.1 – Environment and Biodiversity

Community submissions

- Concerns about loss of habitat for native fauna (including endangered wildlife) which currently reside in or near the proposed development area. This includes impacts relating to the displacement of local species and the loss of the wildlife corridor across the Patyegarang site.
- Concerns about the loss of endangered ecological communities or threatened species, including the glossy black cockatoo, powerful owl, Rosenberg's goannas, red crowned toadlet, and the threatened Coastal Upland Swamp.
- Concern about loss of bushland which currently helps to mitigate the impacts of climate change and lower local air temperatures.
- Concerns that the geographic features of the sites will have flow-on effects across the ecosystem, including steep slopes, which will require substantial preparation work and clearing prior to development. In addition, instability of ground surfaces and general erodibility of soils will be exacerbated by land clearing and cause an increase in hard surfaces and runoff.
- Concern that the development will create further fragmentation of bushland by clearing, roads and increased urbanisation generally. Remnant forest and woodland, comprising the most significant wildlife corridors in Snake Creek and Upper Oxford Creek, will be further separated from the Deep Creek area of bushland, and Ku-rig-gai Chase National Park.

Council submission

- Major loss of high biodiversity habitat – The proposal would facilitate the clearing of approx. 44.7 hectares and a further 6.9 hectares, including threatened species, subject to indirect impacts, resulting in significant impacts on known habitat for various threatened species of flora and fauna, and Threatened Ecological Communities (TECs). This will be accentuated by the proposed small minimum lot sizes and the required land clearing to provide Asset Protections Zones (APZs) on relatively small lots, together with the need for significant cut and fill of land to achieve required road gradients.
- Major impacts on waterways and riparian corridors - the planning proposal would result in significant environmental impacts within the Snake Creek / Narrabeen Lagoon catchment. The proposal is a major catchment disturbance that will affect the value of the valley setting and receiving waters, and impact riparian land. Proposals to permit APZs within the riparian corridor on land zoned RE2 Private Recreation, will require significant clearing and for this clearing to be maintained, diminishing the environmental quality and functioning of these corridors. These areas should be zoned C2 consistent with their intended function.
- Council is of the view that currently the site is almost entirely represented by intact remnant native vegetation or bushland, mostly in good condition. It is Council's observation that the TEC, Coastal Upland Swamp, is located within the proposed road footprint (currently a unformed Crown Road reserve) located east of Lyndhurst Estate and adjoining the proposed emergency evacuation route via Oates Place. Regarding the Duffy's Forest TEC, Council's experience in the local area has found that this TEC has a high likelihood of occurrence on this site and identification is often missed during survey.
- Staff acknowledge that on site survey by Council has not been undertaken, but that structural dominants visible from Morgan Road may be consistent with the TEC. It is recommended that any consent authority for the planning proposal include an independent expert ecologist to review and visit the site for confirmation.
- Council notes that threatened biodiversity values of the site include those listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Early consultation and or referral to the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) is recommended. **Note – the Commonwealth DCCEW was notified of the proposal and did not make a submission.*

Agency Submissions (BCS)

BCS made three submissions in November 2023, March and September 2024 responding to additional information provided by the MLALC. Only BCS's outstanding concerns are summarised below.

- In its current form the proposal has failed to demonstrate application of the Biodiversity Conservation Act 2016 'avoid and minimise' framework. The subject land is fully vegetated and contributes to larger ecological corridors beyond the subject land's boundaries. The native vegetation on subject land includes numerous records of threatened species and ecological communities, and their habitats. The BDAR has failed to adequately justify its assessment of the PCTs and any associated TECs, which in turn undermines all threatened species assessments on the entirety of the subject land.
- With consideration to the proposed structure plan and topography of the site, BCS expects all areas identified for potential development, including areas mapped as "retained vegetation" and APZs would need to be cleared or partially cleared of native vegetation to achieve the development outcomes as proposed. The BDAR does not reflect the full extent of the native vegetation removal required within the areas of retained vegetation which are proposed R2 and RE2 zones, and APZs.

- The planning proposal will allow for R2 and RE2 zones across the locality which will increase the intensity of the use over the subject land. Avoiding impacts on biodiversity values should not be deferred to the future development stage. Rather, they should be addressed as part of the planning proposal to maximise the integration of conservation measures with other aspects of the planning proposal outcomes. This includes designing for the conservation of riparian corridors, planning of infrastructure and roads, flood management, and lot patterns.
- It is unclear how conservation lands (C2) will be protected in perpetuity, owned and managed. Details relating to the mechanisms that will be relied upon to conserve the proposed conservation land are required. **Note – the land will be subject to community title to ensure the C2 lands are protected in perpetuity.*
- The Ministerial Direction 3.1 Conservation zones requires that “A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas”. BCS considers that the planning proposal contains an inadequate assessment of biodiversity values and, in its current form, the proposal has failed to demonstrate application of the ‘avoid and minimise framework’. Furthermore, RE2 and R2 zones are not considered appropriate zones to retain, conserve and protect the high biodiversity values present given the broad range of uses permitted. BCS does not consider that the direction has been adequately addressed.
- BCS recommends strategic mapping of high biodiversity values across the site be used to indicate where avoidance of high biodiversity values can be focused for conservation purposes. The proponent should design their proposal to ensure the persistence of the threatened entities that reside within the site and thereby conserving and protecting biodiversity and important environmental values.
- BCS recommends that high biodiversity values present on the site be zoned C2 Environmental Conservation to ensure the conservation of the entirety of the Snake Creek riparian corridor and its tributaries/natural ephemeral flow paths. The objectives and permitted uses in the C2 zone in the Warringah Local Environmental Plan (WLEP 2011) are considered compatible and consistent with the conservation of the high biodiversity values present and will afford long term protection.
- BCS notes that the updated Planning Proposal includes an additional 2.3 ha of C2 zoned land in the north along Snake Creek and two tributaries on the western side which will replace the previous RE2 Private Recreation zone. While not mentioned in the updated information, there is also a new area of zone R2 in the north of the site that was previously zoned RE2. It is unclear why this area is not zoned C2. **Note - this was required for bushfire safety reasons and is discussed further in the report.*

Proponent Response:

A summary of the additional information provided, and changes made to the planning proposal to seek to resolve BCS’s objection and demonstrate compliance with the Section 9.1 Direction (3.1 Conservation Zones), is provided below:

- Detailed responses to submissions in December 2023, May 2024 and October 2024, specifically addressing:
 - Adequacy of demonstration of the ‘avoid and minimise, then offset’ hierarchy (see further details in ‘Proponent Response’ and ‘PPA team Response’);
 - Responding to concerns about ‘underestimation’ of the extent of impacts;
 - Further evidence demonstrating lack of threatened ecological communities (TECs), specifically Duffy’s Forest EEC and Coastal Upland Swamp; and

- Further evidence demonstrating adequacy of targeted surveys for relevant threatened species.
- Updates in February 2024 to the originally submitted Preliminary BDAR prepared by an accredited ecological consultant (Hayes Environmental), and preparation of an independent Peer Review of the preliminary BDAR by another accredited ecological consultant (biosis, February 2024). Updates to the Hays BDAR included:
 - Further work to confirm there is no uncertainty over the identification of Plant Community Types (PCTs) on the site. Considerable work was done across the site to specifically 'ground-truth' and map PCTs. Threatened species associations are linked to PCTs, not TECs, and were correct as at the date of the preliminary BDAR. It is acknowledged that threatened species associations have changed regularly since commencement of the BC Act and are expected to continue to change. Technically a BDAR is only valid for 14 days, so it will need to be updated to accompany any future development application;
 - Additional detail that sets out the 'avoid and minimise' measures undertaken to meet the necessary thresholds. This is supported by significant strategic mapping of biodiversity values across the site, which was used to inform the development of the indicative structure plan; and
 - Confirmation the preliminary BDAR assumes a "worst case" total loss of vegetation within the development footprint. Therefore, the assessment outcomes of potential impacts will not be altered due to changes in location of zoning between the R2 and RE2 zoned land, or the design within the developable area. At this stage it is also not practical to design the structure plan to a finer scale of biodiversity values mapping. There is flexibility in the structure plan for detailed and nuanced avoidance of potential values at the detailed design stage. Any future development application will be subject to an assessment regarding the sufficient 'avoid and minimise' potential impacts on biodiversity.
- The Biosis Peer Review (February 2024) found that the BDAR (Hayes Environmental) meets the minimum information requirements for a BDAR, including Table 24 (Stage 1: Biodiversity assessment) and Table 25 (Stage 2: Impact assessment [biodiversity values]) of Appendix K of the BAM (DPIE 2020) against the Preliminary BDAR (Hayes Environmental 2024).
- Changes to the Planning Proposal were made to further strengthen its conservation principles and further avoid and mitigate potential impacts, including zoning the entirety of the Snake Creek riparian corridor and its tributaries/natural ephemeral flow paths as C2 (additional 2.3 hectares).
- A revised draft Structure Plan and DCP incorporating these changes is recommended to be submitted to Council for update and approval, including further site planning and controls to maximise retention of vegetation and significant flora and fauna.

Note: the most upper portion Snake Creek (10m in depth) where it adjoins Lot 1 in DP 1285945 will require an alternative zoning to C2, so that the private land can be protected from a possible fire run into that property. Thus, this 10m zone will act as a buffer so that APZ management can be affected without limitation from a C2 zoning. This land has been zoned RE2.

PPA team Response:

Given the complexity of this site-specific merit consideration, the PPA team response has categorised the key issues under two sub-groupings specifically addressing existing flora and fauna and site history; and adequacy of the proposal against the 'avoid and minimise, then offset' approach and Ministerial Direction (3.1 Conservation Zones).

The PPA team engaged an additional independent peer review of the BDAR (Hayes Environmental), the BCS submissions, and the BDAR Peer Review by Biosis to assist in understanding the fundamental matters of contention, and whether the work undertaken to date is satisfactory from a strategic planning threshold (planning proposal). The full peer review, prepared by an accredited ecological consultant at Eco Logical Australia, is provided in **Attachment N**, with the summary of its findings below:

- The BDAR has produced evidence and surveys that comply with BAM;
- The plant community types (PCT) selected are sound;
- There are no threatened ecological communities (TECs) present on the site;
- The iterative filtering process for threatened flora and fauna is sound and correct;
- The seasonal surveys for flora are sound and the survey efforts described within the BDAR and shown on Figure 5b of the BDAR are consistent with the BAM survey guidelines. Where some surveys were carried out in the 'incorrect' season, those species had sufficient survey also carried out in the correct season;
- No serious and irreversible impact entities were identified on the project site, and this is supported in the BDAR with evidence-based justification;
- Some minor updates or clarifications to the BDAR could assist in the assessment, however, would not likely alter the conclusions as to the presence of threatened species or PCTs selected;
- Exclusion and inclusion of ecosystem credit species is sound and appropriate;
- The surveys and conclusions of the BDAR would need to be carried out again at the development application (DA) stage due to the data currency requirements of BAM;
- The BDAR adequately describes the measures taken to 'avoid or minimise' impacts to biodiversity. This included a strategic assessment of the most suitable MLALC land holdings, through to altering design of ancillary facilities within the project site to avoid and minimise impacts; and
- This review concurs with the review carried out by Biosis.

Site development history and native flora and fauna on the site

Whilst the BDAR and other supporting documentation all acknowledge that the site is covered by in-tact native vegetation (with areas of weed species), it is not undisturbed. Large areas of the site have been previously cleared for agricultural and other primary industries, including as an orchard, as shown in the aerials below from the 1930s. From the 1980s it was left to re-vegetate, but not in a manner that was intended to regenerate the land in an ecologically restorative way, and therefore parts of the site have become subject to weeds and poor-quality vegetation. There has been very limited vegetation management on the site since the 1980s.

Figure 5 Excerpt from Aerial – 6/3/1930 (Source: NSW Historical Imagery)

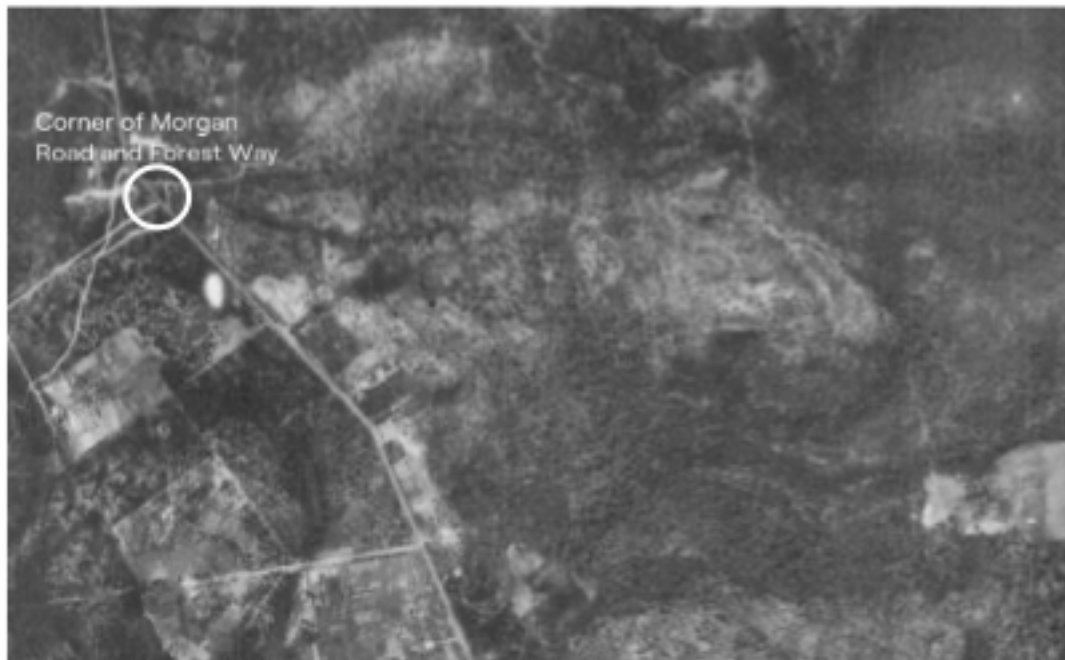


Figure 6 Zoom of above aerial (Source: NSW Historical Imagery)

Figure 6: Aerial Figures from GYDE Planning Proposal Report showing site in 1930s (NSW Historical Imagery)

All three accredited ecologists who have drafted and reviewed the Preliminary BDAR agree with its evidence and surveys demonstrating no Threatened Ecological Communities (TECs) are present on the site, contrary to the submissions by Council and BCS. The BDAR noted that two TECs had the potential to occur on the project site. These were Duffys Forest in the Sydney Basin Bioregion (Duffys Forest) and Coastal Upland Swamp in the Sydney Basin Bioregion (Upland Swamp).

Appendix C of the July 2023 BDAR outlined in detail the justification for the absence of Duffys Forest TEC on the project site. The justification used a semi-quantitative method, comparison against the Final Determination, and used existing regional mapping products. The semi-quantitative methods indicated that Duffys Forest was not present. Similarly, the regional vegetation mapping products do not map its presence in the project site. Given the absence of lateritic soils, and the floristic diagnostic species being not aligned with Duffys Forest, the BDAR concluded the absence of this TEC within the project site.

In determining whether the Upland Swamp TEC was present, the BDAR described sections of the Final Determination. Relevantly, the Final Determination stated that trees are typically absent, and that the community typically contains graminoid heaths and /or sedgelands. The BDAR provided evidence of areas with tree canopy that had previously been mapped as swamps. Since these areas contain trees, they cannot correspond with the Upland Swamp TEC. The justification was supported by the PPA team's independent ecologist review, noting that for the Upland Swamp, a paragraph-by-paragraph assessment against the Final Determination could strengthen the argument, although the conclusions would not change.

Fauna surveys were consistent with the published guidelines at the time of the surveys. Specifically, where some surveys were conducted out of season, the species also had multiple

survey methods applied within the correct season. Therefore, the risk of lack of detection was mitigated through a comprehensive range of methods and across multiple seasons. Four threatened species were included in the assessment and may be potentially affected by the proposal. These were *Tetratheca glandulosa*, Eastern Pygmy Possum and Red-crowned Toadlet, which were detected on the project site; and *Cryptostylis hunteriana*, which was assumed present.

The two species that are of highest biodiversity concern on the site are *Tetratheca glandulosa* and Eastern Pygmy Possum. Not all threatened species records or habitat would be avoided by the proposal. Given the significant size of the site (71 hectares), and relatively modest development outcomes proposed for the site, a future DA stage BDAR would be able to present all the suitable habitats for the threatened species encountered and then calculate the proportion retained and proportion likely to be adversely affected by the project. This is not a BAM requirement, but could be considered as a DCP control by Council.

The PPA team are of the view that sufficient information has been provided in the planning proposal and supporting documents, including the preliminary BDAR, that a future development application for the site would be capable of meeting the requirements of the BAM methodology and the Biodiversity and Conservation Act 2016 given the identified flora and fauna species surveyed on site.

Demonstration of 'avoid and minimise, then offset' and Ministerial Direction (3.1 Conservation Zones)

The PPA team consider that the planning proposal and supporting documentation has sufficiently demonstrated the approach of 'avoid and minimise, then offset' and consistency with Ministerial Direction 3.1 (Conservation Zones).

Chapter 7 of BAM deals with avoiding or minimising impacts on biodiversity values. It provides general guidance on what could be avoided or minimised but does not provide prescriptive descriptions. The chapter describes two key themes when planning a proposal (i.e., development or clearing activity): locating and designing a proposal to avoid or minimise impacts on biodiversity.

Eco Logical's Peer Review notes that BAM suggests prior knowledge of biodiversity values should inform decisions about the location of the proposal. BAM provides hints as to how a proponent may go about this: '*...a final proposal location may be an iterative process...*' (section 7.1.1 (2)). BAM then lists the areas that could be avoided, such as areas lacking in biodiversity values, and suggests that consideration of alternative technologies, routes and locations could be explored. At section 7.1.2 (1), BAM seeks that '*The BDAR or BCAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design...*'.

In addressing project location, the MLALC sought an examination of their landholdings through strategic planning considerations from the early 2000s, followed by the Planning Systems SEPP and DDP processes. A DDP forms part of a suite of planning mechanisms to assist Local Aboriginal Land Councils (LALCs) achieve economic self-determination for their communities and deliver social, economic and environmental benefits as compensation for the loss and dispossession of their land. A DDP formally recognises the development pipeline for a LALC and must be considered by planning authorities in key planning assessment processes, including Planning Proposals and development applications. These strategic planning processes all consistently demonstrated that the subject site was most suitable for development of the MLALC's overall landholdings, including from a biodiversity and conservation perspective.

Once design commenced on the subject site, a structure plan was prepared, informed by biodiversity values. According to the BDAR, the advice provided by Hayes included a hierarchy of

areas of biodiversity value for avoidance. The PPA team's independent ecologist review stated that it is rare for proponents to prepare evidence of an iterative process, particularly for the selection of a project site versus other site options. Based on the above, the PPA team consider the process taken to assess and document the project's location as reasonable from an 'avoid and minimise' perspective.

The PPA team's independent ecological review notes that the BDAR describes areas of vegetation and habitats that would be set aside for conservation, and proposed activities such as the drafting and implementation of a Conservation Zone Management Plan, Biodiversity Management Plan (BMP), and Construction Management Plan. The BDAR stated that the BMP would be tied to an appropriate instrument compelling the landowner to carry out certain conservation activities in perpetuity. The BMP would facilitate the protection, conservation and management of environmentally sensitive areas. All of these documents and requirements are able to be prepared at or before a development application stage.

Within the project site, over 20 ha will be 'avoided and retained' by zoning for conservation (C2). Of all the land zones available in the standard instrument, apart from C1 National Parks and Nature Reserves, C2 facilitates the next highest conservation zoning, with highly restricted permissible land uses. The C2 zone aims to, among other things, 'ensure that development, by way of its type, design and location, complements and enhances the natural environment in environmentally sensitive areas.' The proposal allows for conservation areas containing threatened species and their habitats, and riparian areas that are intended to be managed in perpetuity, and is considered by the PPA team to meet the requirements of the Ministerial Direction.

3.2.2 Issue No.2 – Bushfire and Evacuation

Community submissions

- Almost 3 quarters of submissions were concerned about the risk of bushfire, expressing concern that rezoning land identified as bush fire prone land for residential development may present a risk to life and dwellings. Some submissions note that in the context of climate change, there is potential for more frequent and severe weather events, including bush fire.
- Submissions also identified that the limited ingress and egress routes may not be able to facilitate effective evacuation in the case of a bushfire and may hinder access for firefighters.

Council submission

- The site is bushfire prone (vegetation category 1). Safe evacuation routes have not been demonstrated, development density is unclear, and the proposal relies on compulsory acquisition of Council land for the development of a slip lane on Morgan Road. It is questionable whether the slip lane would resolve evacuations concerns given the 'severe to catastrophic' bushfire risk posed by the development.
- In 2022, Council engaged Blackash Bushfire Consulting to undertake an independent bushfire review of the draft planning proposal and supporting documents (Travis Bush Fire Strategic Study - BFSS). The concerns from this report are outlined below:
 - The proposal has been developed on the premise of evacuation being provided by Morgan Road and a new slip lane on to Forest Way and a new emergency access on to Oates Place. The availability and utility of both of these key aspects has not been demonstrated, yet these are fundamental enabling provisions for the proposal. If one or both of these options are not available, the planning proposal will need to rethink the design response to activation of the site. This is a fundamental issue to be resolved.
 - In its current form, the proposed development presents an unacceptable and, in some

cases, a catastrophic risk to future residents.

- Concern is also raised about the accuracy of weather conditions data referenced in the planning proposal SFS documentation, and limitations regarding its assessment of the proposal against infrastructure, particularly water, electricity and gas.
- In 2023, Council also engaged Meridian Urban to undertake a third-party review of the BFSS accompanying the exhibited planning proposal, having regard to the broader bush fire hazard and risk considerations of the area. The Meridian Report, (October 2023), raised the following matters:
 - The Deferred Lands area is not a low-risk location and thus requires strategic consideration. This is underscored by specific statements contained in the Deferred Lands Strategic Bush Fire Risk Assessment and the NSW RFS draft BFRMP.
 - The BFSS makes several statements which are not underpinned by detailed information or evidence, bringing into question their accuracy. Mere compliance with bush fire protection measures does not address the nature of matters outlined by Chapter 4 of PBP.
 - The concerns raised by both Council and the Blackash review regarding the draft planning proposal in relation to evacuation do not appear to have been addressed. This is a key element at a strategic level. Should the proposed arrangements turn out not to be viable, there is the potential for a sub-optimal outcome to occur which would result in risk transfer to emergency services, surrounding landholders and the wider community, as well as any future residents.

TfNSW Submissions (slip lane evacuation)

- TfNSW generally agrees with the intent to provide a left turn acceleration lane from Morgan Road into Forest Way southbound to cater for the additional left turn movements generated by the proposal, both in the event of a bush fire evacuation and in a typical morning peak.
- TfNSW notes the Traffic assessment report indicates that the slip lane on Morgan Road is triggered following the completion of 230 dwellings on the site. TfNSW's preference would be to have the slip lane constructed upfront as part of the initial development to cater for additional traffic likely to be generated by the proposed development.
- Proposed slip lane on Morgan Road should be signalised due to number of school children currently using the pedestrian crossing facilities at this intersection. In the event of a bushfire emergency, the current signal arrangement could be managed by TfNSW and RFS to run the approach phase longer to coordinate an evacuation, therefore the need for other engineering works may not be necessary.

NSW RFS Submissions

RFS made three submissions in November 2023, May 2024 and November 2024 responding to additional information provided by the MLALC. Only BCS's outstanding concerns are summarised below.

- The NSW Rural Fire Service (RFS) acknowledges the NSW Government commitment to address the present housing shortage and where possible the RFS will do what it can to assist in this regard. However, in this instance the RFS cannot support the Planning Proposal.
- The RFS has considered the information submitted and has the following concerns regarding the high bush fire risk expected to be experienced at the location, and the proposed evacuation options. The site is in an area that will almost certainly be impacted by significant fire in the future. In addition to several localised bush fires, two significant fires have impacted the area in 1979 and 1994.

- The proposed residential zoning will be surrounded on all sides by forest and heath formation vegetation, both externally, and within the proposed conservation zones within the site. The Deferred Lands Strategic Bush Fire Risk Assessment prepared by Meridian Urban for Northern Beaches Council dated March 2022 shows areas of potential high intensity fire surrounding the site.
- The current Warringah Pittwater Bush Fire Risk Management Plan dated 2010 lists assets in the location as being at 'Extreme Risk'. The new draft updated exhibited plan dated 13 February 2023 currently shows the site and most of the evacuation routes as 'High Risk', with the intersection of Morgan Road and Forest Way rated 'Highest Risk'.
- RFS advises that it does not support the Planning Proposal in its current form as:
 - It has not been demonstrated that the proposed rezoning can meet the strategic principles of section 4 of Planning for Bush Fire Protection (PBP) 2019, including the ability to safely support the proposed population growth and density arising from exposure to high bush fire risk;
 - The high density (200m² lots) to the north of the proposed rezoning will contribute to the vulnerability of housing in the event of bush fire due to the small lot sizes;
 - It does not meet the objectives Local Planning Direction 4.3 (b) by discouraging the establishment of incompatible land uses in bush fire prone areas;
 - It does not contain provisions for two-way access roads, which link to perimeter roads required by section 5.3.2 of PBP, 2019 and Local Planning Direction 4.3(3)(c); and
 - The primary evacuation route from the proposed rezoning via Morgan Road could push people to exit past or through bush fire prone vegetation.
- Additional bush fire risk modelling comparing bush fire risk to residential dwellings currently in place, and the bush fire risk to residential dwellings in the event the rezoning going ahead, has shown that bush fire risk increases to the highest level for the proposed development area because of increasing population density in the locality.
- The proposed development is surrounded by Dry Sclerophyll Forest with dense shrubland. In the event of a fire during dangerous fire weather this vegetation can facilitate high intensity fast-moving fires. In September 2024 under moderate fire danger a fire rapidly spread taking between 1-2 hours to spread from Oxford Falls to the Beacon Hill Cromer interface, prompting emergency warnings and a major firefighting response. Under more severe weather conditions we can expect faster and more intense impact on the proposed Patyegarang urban interface. This impact exposing new members of the community to a significantly higher risk with potential for short timeframes to react to any new ignition.
- The development is within an area of high bush fire risk where density of existing development may cause evacuation issues for both existing and new occupants. The RFS is concerned that a fire approaching from the north could cut the main evacuation route onto the proposed Forest Way slipway, which is the primary egress route relied upon in the Transport Assessment report prepared by JMT Consulting dated 8 September 2023. The remaining egress options would be along heavily forested Morgan Road to the southeast, or onto Forest Way (if not closed) via the emergency exit along Oats Place.

Proponent Response:

In response to the feedback provided by Council, TfNSW and RFS during and after public exhibition, the proponent made the following updates and additional clarifications:

- A revised design of the slip lane from Morgan Road onto Forest Way so that it does not rely on acquisition of Council land. It is also noted that through further discussions, TfNSW has advised in writing that servicing of the slip lane during a bushfire evacuation could be managed by TfNSW and RFS on site through a managed signalised intersection, rather than requiring further engineering upgrades. It is also noted that the delivery of the slip lane was the only outstanding concern in Blackash's peer review, and this has now been resolved.
- Travers Bushfire and Ecology provided an updated report in February 2024, which responded to the following concerns from RFS, including:
 - Further evidence to demonstrate that the subject site is not in close proximity to the mapped 'high intensity fire scenarios' in Meridian Urban's review, except for a small area of steep forest in the southeast sector of the site (see **Figure 7** below);
 - PBP Chapter 4 is the basis of strategic assessment studies as defined by Ministerial Direction 4.3; and PBP itself. Travers Bushfire & Ecology prepared a strategic bushfire study (October 2022) and this fully responds to the matters required by both Ministerial Direction 4.3 and PBP Chapter 4. Notwithstanding that approach, the RFS have recently requested the approach be enhanced and aligned to a national risk management protocol. The proponent chose NERAG which is a ISO3100 protocol and which Northern Beaches Council consultant Meridian Urban used in 2021;
 - The concept of density in a bushfire prone landscape has been fully addressed through the implementation of a 100m wide APZ on the boundaries where hazardous landscapes have potentially threatening downslope vegetation assemblages. This has been identified as the southern aspects. The remaining aspects all have upslopes, mostly with Tall Heath vegetation, such that the potential impact is demonstrably less;
 - Through the planned removal of bushfire hazards the planning proposal will provide a marked decrease in hazard, with the PP development entity providing a hard edge to the urban development precincts that directly abut Forest Way. It is also noted the current vegetation is a huge risk to the landowners and occupiers including in Morgan Road, Oates Place, Lyndhurst Way, Caley Way and Ocean View Way.

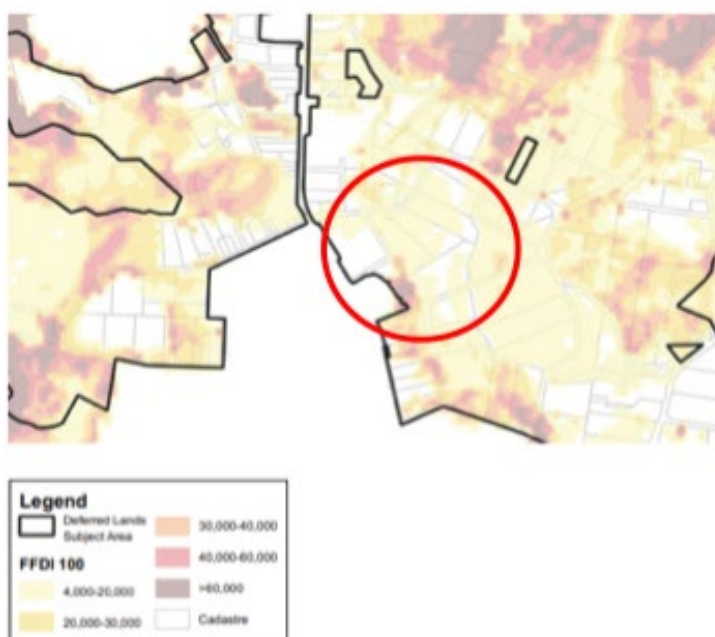


Figure 7: Travers Bushfire overlay of site against Meridian Urban 'high intensity fire scenarios' (GYDE Response to submissions, December 2023)

- The design will enable Morgan Rd to be a safe evacuation route, which it currently is not. A significant benefit is also achieved for special protection development facilities such as the Uniting Church Pre School and the Uniting Church aged Care facility on the corner of Morgan Road and Forest Way. In addition, there is great benefit in the evacuation capability of the CSIRO radar unit on Oxford Falls Road where staff can head into the planning proposal landscape roads rather than travel the full length of Morgan Rd.

Independent Peer Review (Dr Graham Douglas)

- A peer review of the Strategic Bushfire Planning Report was prepared by Dr Grahame Douglas in February 2024, who recommended the following changes to the Structure Plan to ensure the future development could meet the relevant Ministerial Direction and PBP 2019, refer to the changes outlined in the **Figure** below.
- The Planning Proposal was revised to address these recommendations, including:
 - The zoning allocation and lot sizes were amended to reflect the below site plan. The draft structure plan and the draft DCP controls were also amended in August and September 2024 for the southern perimeter road and APZ, but not those to the south east and western portions of the site (refer to further discussion in **Section 3.4.1** of this report); and
 - The larger 600m² lots were located to the south of the site to assist with managing bushfire risk.



Figure 1: Concept Plan – Bushfire (lime APZs, dark green C2, pale green RE2) (JOHN TRAVERS Report)

Figure 8: Dr Douglas Overlay of recommended APZ, lots and permitter roads of the draft Structure Plan (Travers Bushfire and Ecology, August 2024)

In conclusion, the Dr Douglas Peer Review finds that:

- Overall, the removal of areas of native vegetation will facilitate residential use. However, the extension of the creek in the south-west has the potential to bring some threat to the subdivision. The provision of APZs to manage this are strategic, compliant and well located;
- In general, occupants will have good access out of the development from Morgan Road to Forest Way. The internal road network is also generally satisfactory. The lack of perimeter roads in the south-west of concept plan is an area requiring some further improvements subject to cost and topographical constraints. This would need to be addressed at a future DA and may result in the loss of some developable land; and
- The concept plan generally complies with PBP 2019, however, there are two areas requiring some attention. Firstly, the provision of perimeter roads in the south-west is a deviation from the provisions of PBP 2019. Secondly, confirmation at a suitable time by Sydney Water of the provision of adequate water supplies to the site. The second of these issues was not considered an absolute constraint to the planning proposal due to critical component of any future urban development of the site (Note: Sydney Water has since confirmed the ability for adequate water supply for bushfires).

PPA team Response:

Whilst the proponent and their technical team made several significant changes to the planning proposal to address bush fire risk, designing for PBP and meeting the Ministerial Direction, two recommendations were made by both the proponent's specialist team and RFS that were not taken up, namely:

- Similar use of zoning RE2 below the perimeter roads on the south-east and south-west portions of the site, to that done at the southern perimeter road; and
- Demonstrated evidence of two road accessibility for most dwellings to further assist with bushfire evacuation – particularly for smaller sized lots, and the need for a perimeter road in the south-west of the structure plan.

The PPA team reviewed the structure plan considering these two issues with the DPHI Urban Design team. The Urban Design team prepared an example of alternative structure plan that could address these two issues, whilst also considering the steep slope on parts of the site and realistic lot sizes for this land to minimise vegetation loss. The development outcome from this exercise reduced the maximum number of lots from 450 to 370, refer to **Section 4.1.2** of the report for further discussion on these items.

Whilst it is acknowledged that the 370 dwelling outcome designed by DPHI's Urban Design team isn't the only possible design solution, it does demonstrate that to implement two further design refinements recommended by specialists to minimise bushfire risk (perimeter roads and APZs, and second road access), a reduced dwelling number below 450 is likely necessary.

Subject to the implementation of the reduced dwelling numbers to 370, and introduction of RE2 zones below perimeter roads at the south-east and west of the site, the PPA team consider that the planning proposal can meet the objectives of PBP 2019 and the Ministerial Direction. Inclusion of a perimeter road at the south-west of the DCP structure plan should also be considered by Council.

3.2.3 Issue No.3 – Aboriginal Cultural Heritage

Community submissions

- Submissions supported the preservation of cultural and heritage significant sites, and concern

that these important sites could be lost or damaged if the land is rezoned.

- Submissions had mixed views about the MLALC's proposal to raise funds to provide a cultural and education centre through development of the land. Some submissions were supportive of this approach; however, others felt the site should be retained in its current form.
- A small number of submissions suggest the site should form part of an Aboriginal National Park or call on the NSW government to work with the MLALC to consider alternatives, including a land swap.
- Save Northern Beaches Bushlands recommended that the bushland should be protected in perpetuity, including reconsideration of a previous proposal for an Aboriginal Owned National Park (Gai-mariagal National Park) on this and other land in the Northern Beaches.

Council submission

- Council acknowledges the thought and effort that has gone into the planning proposal to conserve and protect significant Aboriginal rock engravings at Lizard Rock from destruction by vandals.
- Council requested the Aboriginal Heritage Office (AHO) review the planning proposal and associated documents, including the Aboriginal cultural heritage report, with their key points summarised below:
 - This is a large land parcel and there is an opportunity to provide good environmental and urban outcomes that would not be possible with smaller or individual landowners. MLALC is operating for its members as a community organisation, not simply for the profit of a single company or family, and this gives scope for a greater net benefit across the community;
 - There is increasing expectation in the wider community that Aboriginal communities should be given a fairer go in relation to correcting past wrongs and in protecting cultural heritage;
 - Bringing the urban fringe closer to Aboriginal sites will put them at greater risk of damage from visitation, graffiti and vandalism; and
 - The main rock engraving sites west of Morgan Road appear to be wholly within the proposed conservation zone, however, the maps provided show the sites and the buffer zone to be further west than the AHO understands the engravings to be. The only site mapping provided in the report is of a very general nature and likely to be inaccurate. The rock engravings east of Morgan Road do appear to be more correctly mapped, however, the conservation zone status of these sites is unclear as it is mapped across different proposed zonings.
- It is recommended that comprehensive site management plans are prepared for the known sites, including more detailed recording to provide a contemporary baseline recording. Highlighting (non-impact cleaning of the grooves under Heritage NSW authorisation) should be carried out as part of the recording process.

HNSW Submission

- Heritage NSW has reviewed the Aboriginal Archaeological Assessment Patyegarang Project, Belrose NSW, dated 11 July 2023, as prepared by Dominic Steele, and acknowledges that this report provides detailed information regarding archaeological and cultural values associated with the project area, as documented in consultation with MLALC. The report provides commitments to avoid direct harm to known engraving sites and to introduce measures aimed at ongoing protection of these sites.
- Heritage NSW recognises the consultation undertaken with MLALC but notes that the consultation to date does not comply with the relevant requirements of the National Parks and

Wildlife Regulation 2019 or the Aboriginal cultural heritage consultation requirements for proponents 2010. Consultation in accordance with these requirements is key to assessing the impacts of this planning proposal on Aboriginal cultural heritage as required by Ministerial Direction 2.3.

- Heritage NSW recommends that a comprehensive Aboriginal Cultural Heritage Assessment Report (ACHAR) be prepared in accordance with relevant policy and guidelines, identifying, describing, and assessing any impacts to Aboriginal cultural heritage sites or values associated with the project. The ACHAR must be prepared in accordance with the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (OEH, 2011) and the Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW (DECCW, 2010), including results of thorough archaeological survey. The ACHAR must also include evidence of adequate and continuous consultation with Aboriginal parties, completed with reference to the Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW, 2010).

Proponent Response:

- The ACHAR is not a mandated document for planning proposals and is commonly lodged alongside a development application. However, in response to the submissions by Council and HNSW, the MLALC engaged Biosis to prepare a preliminary Aboriginal Cultural Heritage Assessment (in May and updated August 2024), which is provided in **Attachment M1** to this report.
- The ACHAR is developed with First Nations people who will be provided the opportunity to inspect the land and the Patyegarang rock engravings sites.
- The ACHAR is informed by the Patyegarang Conservation Management Plan (CMP) and the First Nations consultation, among other things, will discuss the mitigation of potential impacts to the engravings sites that may result from future interpretation and accumulated impacts to the sites that may result from increased public visitation.
- A detailed digital recording of each of the Patyegarang rock engravings, along with conditions at and surrounding each engraving site, will be undertaken to enable identification of immediate, short term, and long-term threats.
- The CMP will guide ongoing protection, conservation, and potential future interpretation of the Patyegarang cultural heritage sites, including specific conservation requirements under Heritage NSW authorisation. The CMP will provide principles and policies for controlled visitation and surveillance. Consultation will underpin the development of the CMP that will provide a management strategy to safeguard the future protection and ongoing conservation of these sites.

PPA team Response:

The ACHAR was submitted to HNSW for comment, noting that a comprehensive ACHAR will be submitted with any future development application. It is also noted that other relevant reports and consultation will be required at later development stages to comply with *Aboriginal Land Rights Act 1983*, the *National Parks and Wildlife Regulation Act*, *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW*, and *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW*.

In preparing the ACHAR, the Biosis report notes that 13 registered Aboriginal parties were consulted regarding the heritage management of the project throughout its lifespan. Consultation has been undertaken as per the process outlined in the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010a). The ACHAR includes the following management recommendations, including:

- Continued consultation with the registered Aboriginal parties;
- Further assessment warranted along creek lines;
- Development of a cultural heritage management plan;
- Application for an Aboriginal Heritage Impact Permit (AHIP), which should be for a term of two years;
- No further archaeological assessment required in areas of low archaeological potential;
- Stop works provision – Discovery of previously unidentified sites or objects; and
- Stop work provision for any potential discovery of human remains.

The PPA team is satisfied with the response to submissions, and that community and agency concerns have been adequately addressed, as they relate to Aboriginal Cultural Heritage and the Ministerial Direction on the site for the purpose of a planning proposal.

3.2.4 Issue No.4 – Flooding and Overland Flow

Community submissions

- Concerns that the final development facilitated by the planning proposal will impact on the Narrabeen Lagoon and its catchment.
- Construction activity and the day-to-day work associated with development could increase hard surfaces and erosion on the edge of creeks leading to increasing siltation and decreased water quality of flows into Narrabeen Lagoon.

Council submission

- The stormwater management should include accurate modelling to estimate the impacts on water quality and volume and develop an effective water management strategy.
- No comparison with pre-development scenario modelling has been supplied (only developed with/without mitigation). The significant quality of the existing forested catchment (the headwaters of Narrabeen Lagoon) must be used as a base line condition. The proposal water related technical studies are insufficient to quantify the cumulative impacts on the downstream creek system and catchment area and to Narrabeen Lagoon itself.
- There is no explanation in the stormwater management plan of how on-site stormwater detention (OSD) will be implemented in accordance with councils Water Management for Development Policy.
- The planning proposal provides insufficient information to adequately consider the proposed stormwater detention system and test the claim that the system would mitigate any increase in stormwater quantity and quality. It is recommended a peer review of the Stormwater Management Plan's water management strategy (quality and quantity) be undertaken to demonstrate that all the objectives of Council's Water Management Policy for Development and the claim that the stormwater system would mitigate any increase in stormwater quantity and quality.
- Council has concerns that the planning proposal could have long term adverse or cumulative impacts on flood behaviour (onsite with R2 development and the downstream environment). Council must be satisfied that the proposed systems can reduce post development flows to predevelopment levels over the life of the development.

Agency Submissions

BCS made three submissions on 1 November 2023, and a further two submissions in March and September 2024 responding to additional information provided by the MLALC. Only BCS's outstanding concerns are summarised below.

- Concerns that the modelling undertaken in the Flood Impact and Risk Assessment Report (FIRA) required further detail and modelling to properly demonstrate that the post-development stormwater outcomes would not negatively impact the surrounding waterways and Narrabeen Lagoon catchment.
- The FIRA must address the local planning direction; and discussion of each item in the direction to demonstrate consistency. Supporting guides must be referenced, including incorporating 2016 Australian Rainfall and Runoff in studies. Regardless of whether end of line treatment or dispersed treatment measures is adopted, the flood modelling methodology must appropriately reflect the hydrological changes under-developed conditions, including changes to flow volume and timing.
- The route to Wakehurst Parkway via Oxford Falls Road is frequently flooded and impassable at both Oxford Creek and Middle Creek. It is recommended that the hydraulic model is extended downstream to include Oxford Falls Road and that a suitable frequent event such as the 1 event per year is used to map flooding over the road.
- BCS notes that the flood impacts cannot be accurately assessed until the modelling issues above are resolved. BCS requests that information such as peak flows be provided for the post-development scenario both with and without treatment measures so that the changes due to the development and impact of treatment measures can be understood.
- The provided stormwater management report is a very high-level document that does not demonstrate adequate consideration of a strategy to mitigate the impacts of development on stormwater and flood flows. Consideration should be given to the locations of stormwater detention basins, noting that bioretention swales and basins are unlikely to meet the requirement to reduce peak flows from all storm events. In particular, the larger events must be modelled in a suitable hydrologic software package.
- BCS maintains the position that the Planning Proposal is inconsistent with Ministerial Direction 4.1 Flooding and the NSW Government's Flood Risk Management Manual 2023.

SES

SES made no objection to the proposal, but included the following summary points for consideration:

- Recommend ensuring that rising road access is available for all proposed dwellings on the site;
- Recommend ensuring that the community is aware of the significant flood risk on nearby roads such as Oxford Falls Road and Wakehurst Parkway, for example, through appropriate signage;
- Note that the site has slope gradients reaching up to 35%, and may therefore pose a risk of overland flow flooding on the site and therefore recommend this is assessed.
- Note parts of the site are affected by flooding as frequently as a 5% Annual Exceedance Probability (AEP) event with several proposed residential areas becoming High Flood Islands due to road inundation.

Proponent Response:

- The proponent prepared detailed responses to Council and Agency submissions to address flooding and stormwater concerns, which are detailed in **Attachment M1**. These responses also included preparation of:

- An updated FIRA in July 2024 that provided additional detailed modelling as requested for pre- and post- development scenarios with and without any stormwater detention, and re-consideration of the Section 9.1 Direction for Flooding (4.1);
 - Hydrology models run for the 5% AEP, 1% AEP, 0.5% AEP, 0.2% AEP and PMF design storm events for storm durations ranging from 15 minutes to 4 hours to determine the critical storm duration and median temporal patterns at the site downstream boundary. The critical storm duration was found to be 25 minutes for the 1% AEP, 0.5% AEP and 0.2% AEP events and 1 hour for the 5% AEP event. For the PMF event, the critical storm was 30 minutes based on the maximum for all durations run. For all other events for which the ensemble of storms was run, the median storm was selected as these generally resulted in more conservative peak flows than the mean storms; and
 - An updated Stormwater Management Plan addressing feedback from Council and Agencies.
- The results show that proposed stormwater detention features proposed in the stormwater footprint methodology can manage the peak flows in the post-development scenario to be equal to or less than the peak flows in the pre-development condition in most of the modelled storm events. Although there are some proposed sub-catchment areas which show a slight increase in the post-development mitigated peak flows in the 5% AEP, these increases have largely been offset by reductions in peak flows in the other sub-catchment areas.
 - The updated documents and analysis show that the draft structure plan is compatible with the existing floodplain environment and is adequate to support the planning proposal from a flooding perspective. The flood assessment demonstrates the site can be developed in accordance with Council and DPHI's flood planning requirements, without causing adverse offsite impacts to water levels and peak discharge downstream of the site.
 - The proposed stormwater detention features located within the lots and roads can manage the increase in catchment runoff due to the proposed development in storm events up to and including the 0.5% AEP event by reducing the post-development peak discharge from each sub-catchment to within a reasonable amount as predevelopment.
 - With respect to the commentary around Oxford Falls, it is noted that for emergency evacuation, there is a rising flood-free egress route via Morgan Road headed in a north and western direction. This would be the recommended evacuation route as opposed to travelling downstream towards the road crossings over Oxford Creek and Middle Creek which are flood affected. This can be detailed in a Flood Emergency Response Plan for the development if PMF modelling results in flooded lots upon completion of detailed design, although it is considered that this will be unlikely.

PPA team Response:

The subject site is not currently mapped on Council's Flood Prone Land. However, the FIRA and supporting documentation shows that the site is affected by minor flooding which is mainly concentrated within the Snake Creek corridor and connecting overland flow paths. This area is zoned C2 and no development will be permitted within the area.

The updated FIRA and Stormwater Management Plans submitted by the proponent in July 2024 provide significant additional modelling scenarios demonstrating that the site will have acceptable stormwater, water quality and flood outcomes in a post-development scenario, and that the planning proposal satisfies the requirements of the Ministerial Direction related to Flooding (4.1).

The additional information sought by BCS relates to detail that can only be resolved at a DA level where it relates to overland flow, earthworks and stormwater detention. The proponent's draft DCP for the site, which is recommended to be submitted to Council for its refinement and approval,

includes appropriate planning controls to address these matters. Further, if the planning proposal is supported and the site included in the Warringah LEP 2011, the existing detailed Council DCP controls related to flood and stormwater will also apply to the site to ensure appropriate DA level outcomes.

The PPA team is satisfied with the response to submissions, and that community and agency concerns have been adequately addressed, as they relate to flooding and stormwater on the site.

3.2.5 Issue No.5 – Infrastructure Capacity and Delivery

Community submissions

- Concerns regarding sufficient availability of infrastructure and services to support the development, including the risk of high costs being passed onto residents of the Northern Beaches Council area or the residents of the proposed development.
- Concerns that the existing roads may not be able to cope with the increased traffic likely to result from development facilitated by the rezoning, and question whether public transport will be adequate to service the increase in population.
- Concerns that the development will put pressure on the availability of other infrastructure, including schools, hospitals, wastewater and electricity. Some submissions were concerned about infrastructure provision more broadly, but did not identify specific infrastructure.

Council submission

- Council is concerned that insufficient information has been provided about required infrastructure upgrades - (e.g., new roads, stormwater detention) and impact on social infrastructure capacity (e.g., libraries).
- New roads are proposed on valley slopes that exceed the maximum grades recommended by Austroads and are unwalkable. To achieve complying gradients, excessive and expensive cut and fill will need to be undertaken, further impacting existing biodiversity and the environmental quality of the proposed development. The significant infrastructure costs – which also would include relocation of a transmission line - would need to be borne by future residents (as community title).
- Augmentation of utility services is required to service the site. Before any Planning Proposal proceeds, two key fire-fighting matters must be addressed, water supply and undergrounding of power lines. Sydney Water must confirm that the potential future augmentation accounts for water capacity and pumping requirements necessary for fire-fighting purposes.
- There needs to be certainty that the existing 33kV powerlines are undergrounded which is a critical element for evacuation in a bushfire event. One of the main evacuation routes from the site is adjacent to the current 33kV alignment and passes underneath these powerlines in one location. The location of these powerlines poses significant risk during a bushfire event and must be undergrounded to eliminate this risk. The Planning Proposal provides no evidence that this undergrounding can be practically achieved.
- Crown lands within the site should remain within public ownership.

TfNSW Submission

- Traffic assessment report has indicated that the extension of northbound right turn lane on Forest Way would be triggered following the completion of 230 dwellings on the site. Should this Planning Proposal be approved, proposed road works identified to mitigate the traffic impacts of the development would need to be reviewed and supported by TfNSW prior to the

lodgement of the first subdivision development application (DA). In addition, the works would need to be completed upfront as part of the initial development to cater for additional traffic likely to be generated by the proposed development.

- The traffic assessment report (September 2023, page 16) stated that the anticipated travel by bus could ultimately make up approximately 20% of all work-related trips from the site, more than double the existing model share for residents of the area. Based on a conservative estimate of 450 dwellings on the site the mode share may result in a demand of approximately 200 additional bus trips once the site is fully developed. Report further stated that observation around the occupancy of bus services in early 2022 indicated buses had more than 50% of seats unoccupied.

Crown Lands

There are several Crown Roads within the subject site and Crown Lands has received applications to close and purchase the Crown Roads. Crown Lands and the MLALC are in ongoing discussions about the purchase of the subject Crown Roads at the appropriate time, which does not create any fundamental impacts on the consideration of the planning proposal but will be required to be finalised prior to the lodgement of any development applications.

Sydney Water, Jemena and Ausgrid

Ausgrid, Jemena and Sydney Water have been in regular consultation with the proponent and currently raise no objection to the proposal subject to appropriate consultation and approvals being obtained at development application stage.

Proponent Response:

A response to these submissions by the proponent can be found in **Attachment M1**. In response to the TfNSW, the proponent's traffic consultant has revised their traffic report which was provided to TfNSW. The MLALC, through their consultant team are also liaising directly with Sydney Water and have confirmed that:

- The site is serviced by the Warriewood Wastewater Treatment plant. This plant has the capacity to service the proposed development;
- The upgrade of any Sydney Water assets or infrastructure needed to service the project will be at no cost to government;
- Technical matters associated with the project can be easily resolved; and
- There are ongoing communications with Sydney Water in regard to technical matters and their resolution.

PPA team Response:

A detailed response to these submissions by the PPA team can be found in **Attachment H and K**. The land is well located close to existing services that will be able to meet the future development needs of the planning proposal, while managing the potential for impact on surrounding areas, subject to resolution of detailed development level agreements with relevant utilities and agencies.

The PPA team referred the TfNSW and Council submissions to its specialist Transport Advisory team for review and comment. This team considered that:

- Access to the development can be achieved via the intersection of Forest Way/Morgan Road and Oxford Falls Road / Wakehurst Parkway;
- The traffic analysis estimates up to a total of 328 and 355 vehicles will be generated during the AM and PM Peak respectively, based on a full uptake of the dwelling capacity; and

- Traffic analysis indicates that the existing intersection of Forest Way and Morgan Road will operate satisfactorily with the estimated development traffic during commuter peak periods. The overall Degree of Saturation (DOS for Morgan Road intersection is identified to be 0.491 during AM Peak.

[Note: DOS is used to analyse the capacity of an intersection and to determine whether improvements are needed to reduce delay. Any number over 1.0 indicates oversaturated conditions. In general, DoS under 0.9 is considered acceptable for signalised intersections (Austroads, Part 3, pp, 38)].

The PPA team is satisfied with the response to submissions, and that community and agency concerns have been adequately addressed, as they relate to infrastructure capacity on the site at a level of detail required for a planning proposal.

3.2.6 Issue No.6 – Dwelling Density and Cap

Community submissions

- Submissions raised concerns that the proposed rezoning may result in increased traffic volumes, congestion and commute times on local streets and/or major arterial roads on the Northern Beaches. Submissions raised concerns about the limited capacity of Morgan Road to accommodate the increased traffic and increasing congestion on Forest Way, Wakehurst Parkway and Warringah Road.
- A small number of submissions raised the scale or density of development that will be facilitated by the planning proposal, with 2% of submissions indicating that they do not support the proposed density. A further 1% indicate that they support higher density development.

Council submission

- The proposed LEP provisions to cap dwelling numbers in R2 zone are inadequate as provisions in the Housing SEPP and Codes SEPP do not require reference to Council's LEPs before a complying development certificate can be issued for dual occupancy or secondary dwelling development.
- There is a strong likelihood that approvals will be granted for development over and above the 450 dwelling cap based on Council's experience elsewhere (Warriewood Valley). In addition, seniors housing is permitted in the R2 zone under the Housing SEPP, contrary to the requirements of the Gateway determination. If the Planning Proposal proceeds, zoning the land instead as C3 – Environmental Management resolves these issues, and also prohibits other uses vulnerable to bushfire hazard that are permitted in the R2 zone.

Proponent Response:

- The site has good access to a variety of services and facilities including retail, recreational, recent and major hospital facilities, educational services, public transport, aged care facilities and key utilities and infrastructure. Large retail services are available at a number of nearby shopping centres including Warringah Mall (located approximately 8.5 km from the Site), Forestway Shopping Centre (3.4 km away and anchored by Coles and 52 specialty stores) and Glenrose Shopping Centre (3km away and anchored by Woolworths and 50 plus specialty stores). A neighbourhood supermarket (IGA) is situated within walking distance (approximately 800m) from the Site's western boundary.
- There are close to 30 public and private schools within a 5km radius of the Site, including Frenchs Forest Primary School, Mimosa Primary School, Belrose Primary School, Kambora Primary School, Covenant Christian School, and Forest, Davidson and Beacon Hill High Schools, amongst others.

- There are significant major industrial and commercial centres in close proximity, providing key sources of employment opportunities. The Austlink business park is situated less than 2km from the Site and is home to the Belrose SuperCenta and major outlets such as Domayne and Bunnings.
- Frenchs Forest Health and Education Precinct, which includes major hospitals, universities and medical research institutions, is 6km to the south and connects the community to health and education services. The new Northern Beaches hospital (3 km away) provides for significant health services in the area. Further east, Dee Why and Brookvale provide further employment opportunities and are a hub for regional public transport services.

PPA team Response:

From a local infrastructure and capacity perspective, the proposed dwelling cap of 450 dwellings is acceptable. However, other site circumstances related to bushfire and slope mean that the PPA team is recommending a reduced number of dwellings of 370, compared to the 450 dwelling cap that was publicly exhibited. Refer to **Sections 3.2.2** and **4.1.2** of this report for detailed analysis justifying the proposed reduction in dwellings to 370.

3.2.7 Issue No.7 – Strategic Planning Framework and draft DCP

Community submissions

- Many of the community submissions highlighted the proposed rezoning in the context of the current strategic planning frameworks such as the Greater Sydney Region Plan, the Northern Beaches Local Planning Statement – Towards 2040 and Local Housing Strategy which do not identify this land for future housing.
- A small number of submissions address housing supply. Of these, 1% support the planning proposal highlighting that the rezoning will allow for additional housing in the area. These submissions highlight the limited housing supply in the Northern Beaches area and express the hope that the additional housing will improve affordability in the area. Some respondents suggest that the high development costs will mean that housing may not be as affordable as other homes in the area.
- Some submissions provide feedback on the process for the rezoning. Some of these submissions address the role of the department in the rezoning process. Other submissions request that the same planning ‘rules’ apply to the MLALC as apply to other landowners. Two submissions request that a public hearing be held in relation to the planning proposal.

Council submission

- Inconsistency with the Greater Sydney Regional Plan and the North District Plan particularly with respect to increasing housing density in areas subject to hazards (see excerpt from Meridian Urban, urban releases in the Metropolitan Rural Area, preserving remnant bushland and high biodiversity precincts, walkable cities, integrating landuse and transport, delivering high quality open space and reducing carbon emissions).
- Disproportionate weight given to the Development Delivery Plan (DDP) noting that the DDP contains no detailed analysis of environmental issues and mostly outlines MLALCs strategic interests in land (not the community’s interests) and must only be “taken into account” by the Planning Proposal Authority i.e. it is not the determining matter for consideration in the assessment of the Planning Proposal, being only one matter amongst many in law that the Planning Proposal Authority must consider, including regional plans and local strategic planning statements.
- Inconsistency with Council’s Local Strategic Planning Statement – Toward 2040 particularly

related to Healthy and valued coast and waterways, Protected and enhanced bushland and biodiversity, Protected scenic and cultural landscapes, Protected Metropolitan Rural Area, Greener urban environments, A low-carbon community, with high energy, water and waste efficiency, Adapted to the impacts of natural and urban hazards and climate change, Infrastructure delivered with employment and housing growth, Access to quality social housing and affordable housing, and Frequent and efficient regional public transport connections.

- Inconsistency with Council's Local Housing Strategy which seeks to focus housing growth in identified established centres, close to public transport and services, and away from areas subject to hazards. Ad hoc planning proposals such as the subject site undermine Council's strategic planning framework, infrastructure planning and potentially the success of planned centres.
- Inconsistency with Council's Affordable Housing Policy which seeks 10% affordable rental housing for all planning proposals for up-zoning. The Affordable Housing Discussion Paper submitted with the Planning Proposal to address Gateway conditions does not commit to dedication of land or housing to Council for use in perpetuity as affordable housing which is inconsistent with Council's current Affordable Housing Contributions Scheme. Rather it proposes affordable housing be provided for 15 years only and managed by MLALC, at the end of which a "review" will be undertaken to determine the appropriateness of the scheme.

GCC submission

- The Greater Cities Commission (Commission) recognises the pathway for this Planning Proposal has been facilitated by the Development Delivery Plan approved under the State Environmental Planning Policy (Planning Systems) which supports Planning Priority N4 in the North District Plan to 'strengthen the economic self-determination of Aboriginal communities by engagement and consultation with Local Aboriginal Lands Councils to better understand and support their economic aspirations as they relate to land use planning.'
- In this context the Commission considers the Planning Proposal is broadly consistent with relevant Objectives in the Greater Sydney Region Plan and associated Planning Priorities in the North District Plan.
- Planning Priority N18 Better Managing Rural Area: While the overall intent of the objective is to protect rural areas, including the Metropolitan Rural Area (MRA), there is also acknowledgment that: 'parts of the urban-rural fringe are owned by Local Aboriginal Land Councils. Future planning of these areas may be more flexible in order to balance rural values with greater economic participation, and community and cultural uses by Aboriginal people.'
- Planning Priority N4: Fostering healthy, creative, culturally rich and socially connected communities: The proposal is generally consistent with this priority as it aims to deliver housing in conjunction with social infrastructure and a cultural community facility. It will also facilitate protection of First Nations heritage on the site and provide opportunities for cultural knowledge to be shared and facilitate the economic self-determination of First Nations peoples.

Proponent Response:

- The DDP guides the delivery of this planning proposal as it is directly relevant to the strategic context and merit of the site. The DDP contains no detailed analysis of environmental issues as it is a precinct wide analysis of which was approved by the Minister for Planning, to set out the objectives for identified land owned by MLALC. In approving the DDP, the Minister has established the strategic merit for the site.

- This PP provides detail solely for the Patyegarang site and addresses all other matters as per the LEP making guidelines, and all other relevant policies. The detail provided in the PP can be sufficiently relied upon by the Planning Proposal Authority to assess all factors on the merit.
- Though the site has not been identified in an Urban Investigation Area, it is identified in the DDP, which was put forward after the creation of the GSRP. The DDP undertakes a strategic investigation of the area that identifies it as a key location for residential uses with close connection to cultural landscapes, and a bushland setting as per the GRSP, which is also acknowledged by the GCC in its submission.
- This PP is not an “ad hoc” approach as the DDP provides a strategic vision set out for the MLALC owned land. The proposed subdivision layout reflects the local character and assists Council in reaching their housing targets. Further it is a scheme that directly address the constraints of the site and works to mitigate these and will also allow for improved road and walking infrastructure.

PPA team Response:

The PPA team agrees that the strategic merit of the subject planning proposal has already been demonstrated. Both the SEPP and DDP processes relevant to the site demonstrated its strategic priority. The strategic merit of the proposal has been previously considered and resolved in support by the Planning Panel on three previous occasions, being December 2022 (Independent Aboriginal Review), May 2023 (Support to progress to Gateway) and September 2023 (support to be publicly exhibited).

The post-exhibition process has focussed on consideration and resolution of site-specific planning and environmental matters (site specific merit), which are detailed in the subject report and Attachments. Subject to the further changes recommended by the PPA team in **Section 4.1.2** of this report (including a pathway for a 10% affordable housing contribution), the planning proposal (as amended) meets both the strategic merit and site-specific merit requirements.

It is also noted that an updated draft DCP is being recommended to Council to review, update and finalise to enable additional planning controls where needed to resolve any outstanding site-specific matters.

4 Post-exhibition changes

Proponent Lead Post-Exhibition Changes

In response to Agency and community submissions the PPA team wrote to the MLALC on 3 July 2024 to request changes to the proposal to respond to submissions. In response the MLALC provided an updated Planning Proposal (and supporting technical reports) making the following post exhibition changes to the proposal:

- A revised zoning plan to incorporate:
 - An additional 2.3ha of C2 Environmental Conservation zone including land north along the Snake Creek corridor and along the two feeder streams on the western side to create a riparian conservation corridor;
 - Additional RE2 Private Recreation zone to function as an APZ adjacent to the southern perimeter road and the property at 20 Morgan Rd;
- Revised indicative structure plan, showing additional connections along sections of the perimeter road to the north and south-west to align with Travers Bushfire Ecology Peer Review for location of roads and APZs;

- Revised minimum lot size map, incorporating a 450m² minimum lot size adjacent to the Snake Creek corridor to support appropriate APZs;
- Insert within Schedule 1 an additional permitted use clause to include dual occupancies as a permissible use within the R2 zone and a corresponding minimum lot size control of 600sqm;
- Insert within Schedule 1 an Additional Permitted Use clause to include environmental management works, utilities and services, bushfire works and APZs and stormwater services as permissible uses within the RE2 zone;
- Include Standard Instrument clause 5.3 – Development near zone boundaries, for zones R2 and RE2. The relevant distance where this clause applies between zones would be 15m. A revised draft DCP that explicitly responds to the feedback provided to the DCP in Council's 2023 submission; and
- An amended draft DCP updated to address detailed comments made by Council in their submission to the public exhibition period in September – November 2023.

The Figures below show the changes to the zoning, lot size, and structure plan maps to reflect the post exhibition changes. Critically, the changes were made to ensure that the final development controls, including lot size, zoning, building height, conservation and APZs are consistent with the development outcomes envisaged in the Structure Plan. In particular, ensuring that residential development cannot be delivered in areas to the south of perimeter roads that act as APZs, or in land mapped for open space and conservation.

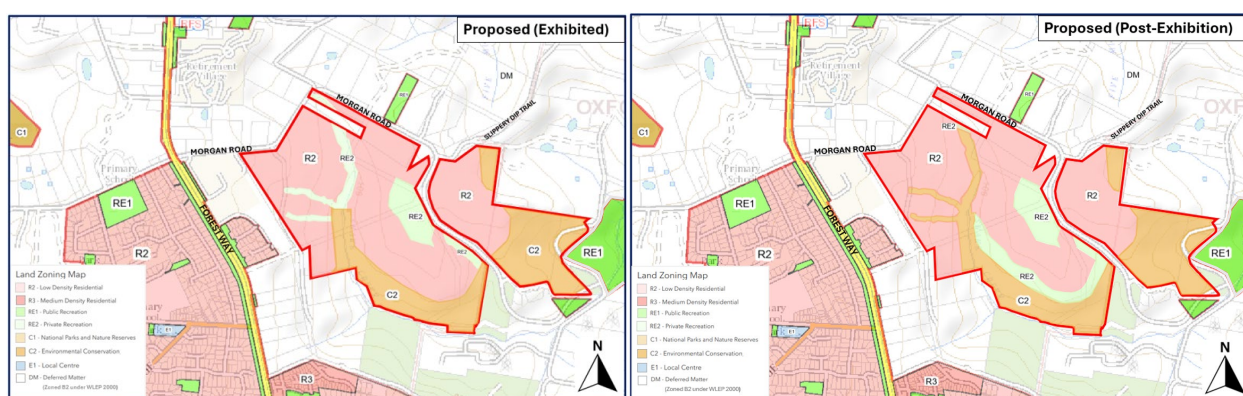


Figure 10: Exhibited Land Zoning Map (left) Post-exhibition changes to zoning map (right) (Cox)

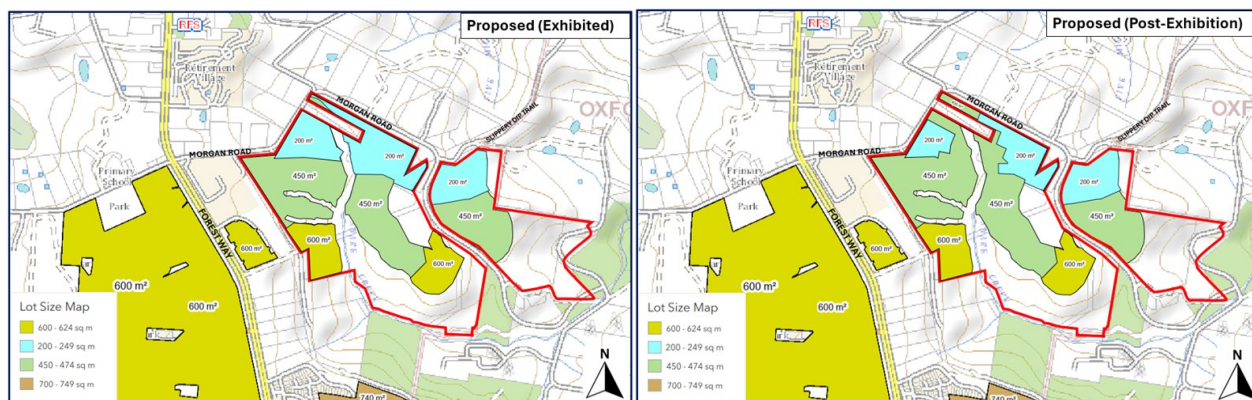


Figure 11: Exhibited lot size map (left) Post-exhibition changes to lot size map (right) (Cox)

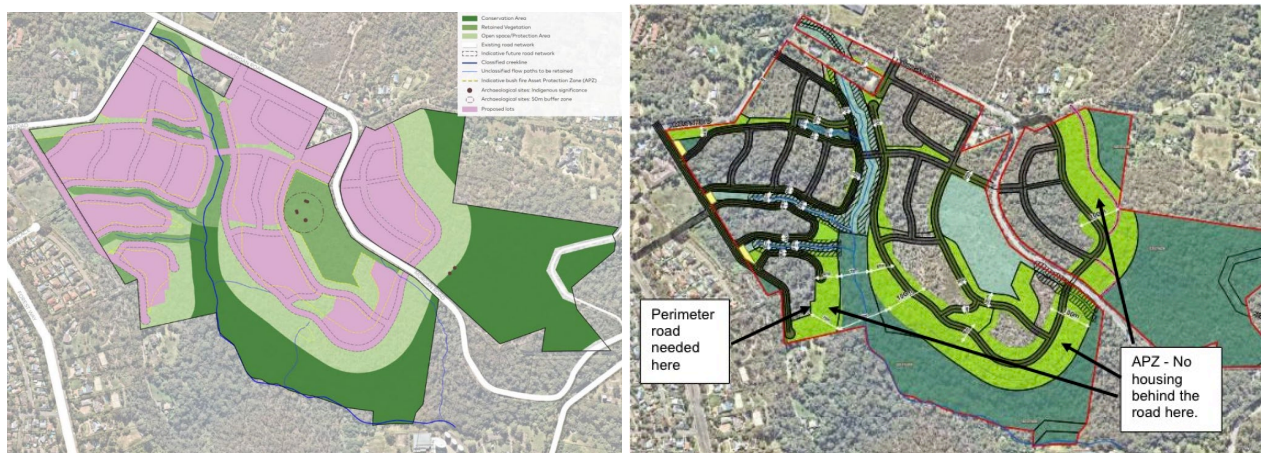


Figure 12: Updated Structure Plan (left Cox) aligned with Bushfire Concept Plan (right Travers Bushfire Ecology)

PPA team recommended post-exhibition changes

As noted above, the PPA team generally supports the proponent led changes; however, further changes are recommended to the Panel to respond to the two outstanding agency objections, and to support the planning proposal's progression to finalisation.

Further zoning, height and lot size changes

One of the primary drivers of the post-exhibition changes was to ensure that the land zoning and other LEP controls accurately reflect the development outcomes identified in the Structure Plan (prepared by Cox) so that land zoned R2 was capable of being developed for residential purposes, as opposed for private recreation and APZs. Earlier versions of the Planning Proposal included large areas of land identified for open space or APZs being zoned as R2/RE2 and containing maximum building heights and minimum lot sizes.

The post-exhibition planning changes made by the MLALC addressed the majority of concerns raised. However, the PPA team noted that there were two areas of land to the south-east and west that were intended for open space and APZs that are still proposed to be zoned R2. To provide an equitable approach, that removes any uncertainty around land that can and cannot be redeveloped for housing, the PPA team recommends further changes to the zoning and minimum lot size maps shown in the Figures below.

These changes will have no effect on the overall development yield of the project as the land able to be developed for residential purposes, is clearly identified within the overall Structure Plan (refer to **Figure 8**), as is land for use as open space or APZs. However, the Structure Plan does not have the statutory weight of the LEP maps, and the proposed changes to the zoning, building height and lot size maps will simply ensure that all future development applicants have a clear and consistent understanding of what land can and can't be developed for housing across the Structure Plan, LEP and DCP controls.

These changes also resolve the concerns that RFS and BCS had that retaining residential zoning, building height and lot size controls on land that was intended for conservation, open space, and APZs, created development uncertainty, and risked future development applications being lodged on that land. Refer to the Figures below for the proposed changes.

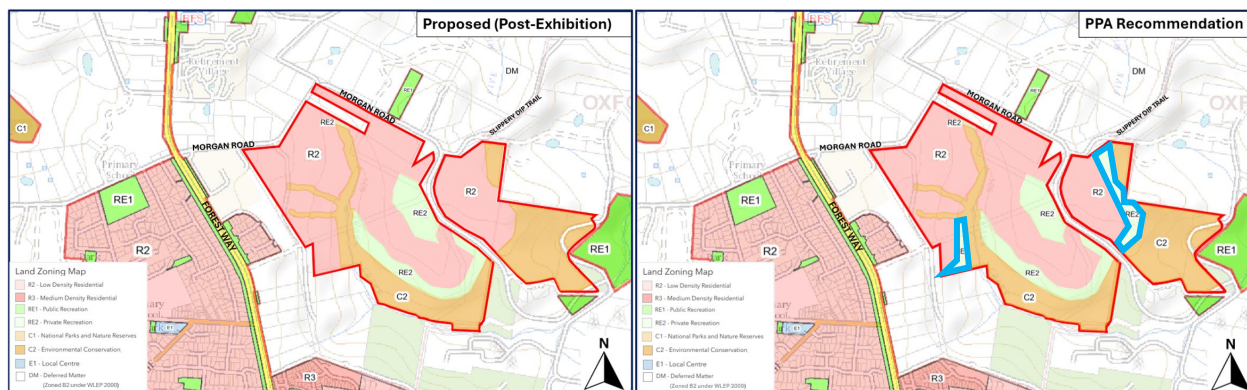


Figure 13: Proponent post exhibition zoning map (left Cox) PPA recommended zoning map (right Cox, modified by PPA in blue)

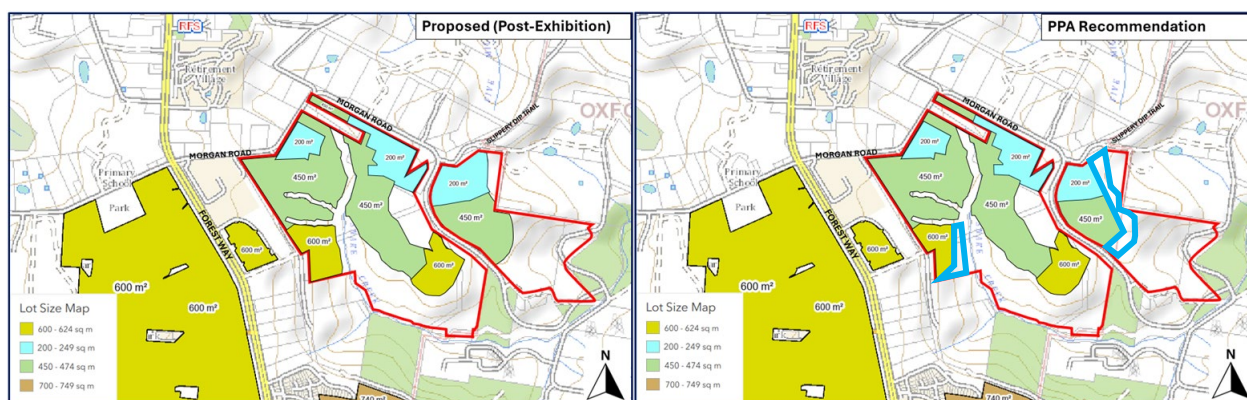


Figure 14: Proponent post exhibition lot size map (left Cox) PPA recommended lot size map (right Cox, modified by PPA in blue)

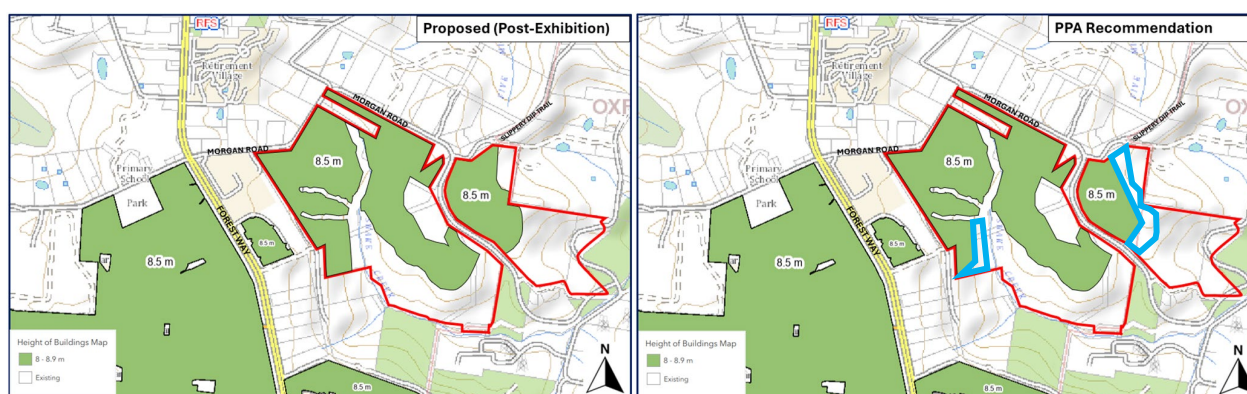


Figure 15: Proponent post exhibition building height map (left Cox) PPA recommended building height map (right Cox, modified by PPA in blue)

Dwelling Cap

The planning proposal originally proposed 450 lots when considered by the Panel at its original review of the proposal (meeting December 2022). At this meeting, the Panel required that the planning proposal be amended to provide a maximum of 450 dwellings (rather than lots) to prevent inappropriate density increase across the site because of multiple dwellings being able to be contained on a single lot, subject to a later development application or CDC process.

The primary reason for seeking to limit the number of dwellings on site was to best assist in minimising inappropriate impacts on the future residential development related to bushfire, biodiversity, slope and overland flow by ensuring that the planning proposal is consistent with the Local Planning Directions related to these matters. The dwelling cap was also intended to ensure the planning controls are robust and don't create risk of unsustainable future development outcomes.

As discussed in detail in **Section 3.2** of this report, BCS and RFS continue to have objections about the proposed development density (450 dwellings), and its impact on both bushfire and biodiversity risk. RFS's most recent submission explicitly noted that *"Based on the indicative site layout the road design for the proposed S1 and S2 development areas in the south west of the development does not include a required secondary access road, and the single access road proposed is bordered by vegetation on both sides and on this basis the RFS considers the planning proposal does not meet the access requirements required by section 5.3.2 of PBP, 2019 and Local Planning Direction 4.3(3)(c)."*

BCS has also raised concerns that the delivery of 450 dwellings is likely to cause further unnecessary land clearing across the site. As a result, the PPA team requested that the Department's Planning and Urban Design team review the proposal to advise whether they considered the 450 dwelling limit to be appropriate given the site's bushfire, biodiversity, slope and overland flow constraints.

The Urban Design review undertaken focused on re-distributing lots in a manner that was more realistic given the site slopes – particularly where smaller lots were located on significant slope (over 15 metres) and would therefore have limited viability, or would cause the removal of unnecessary vegetation. It also looked to introduce secondary streets and lanes to as many lots as possible consistent with RFS advice. Refer to **Figure 12** below for an indicative layout.

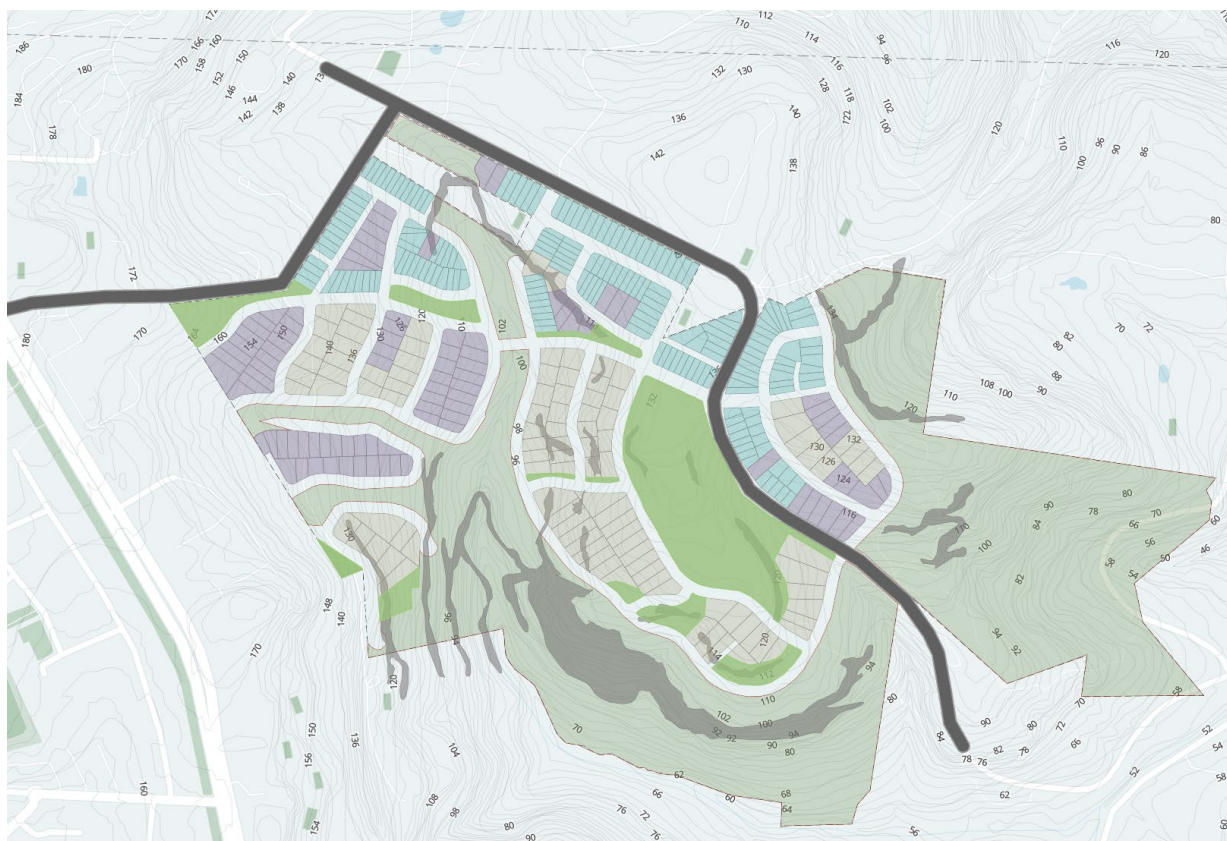


Figure 16: Indicative Structure Plan of redistributed lots once slope and addition of laneways incorporated (DPHI – Urban Design)

Whilst it is acknowledged that the 370 dwelling outcome designed by DPHI's Urban Design team is not the only possible design solution, it does demonstrate that to implement two further design refinements recommended by specialists to minimise bushfire risk (perimeter roads and APZs, and second road access), a reduced dwelling number below 450 is likely necessary. This change can also help resolve the two outstanding agency concerns.

Affordable Housing

One of the Gateway Conditions states that the proposal must “*introduce a discussion of how the proposal will deliver affordable housing in a manner consistent with the Northern Beaches Council Affordable Housing Contribution Scheme*”.

As part of the MLALC's response to this condition, a feasibility analysis was undertaken to determine the appropriate affordable housing requirement for the site, which found that up to 10% would be feasible. The MLALC made an offer to the Chair of the Sydney North Planning Panel (August 2023) to provide a financial contribution on the site for affordable housing equivalent to the 10%, which would equate to delivery of an estimated 20 dwellings.

The PPA team agrees that an affordable housing contribution of 10% of total dwellings is an appropriate and feasible outcome for this site. Given the Warringah LEP 2011 already includes both an affordable housing Clause (6.11), and Northern Beaches Council has an existing affordable housing contributions scheme, this would normally be the appropriate delivery mechanism. However, in recognition of the metropolitan rural nature of the site and landholdings, the PPA team are comfortable for a number of delivery options to be explored and determined by the LPMA at finalisation stage, should the planning proposal be supported by the Panel.

The table below provides an overview to the Panel of the existing planning controls, the post-exhibition controls recommended by the proponent, and the PPA team recommended changes that incorporate further changes to address outstanding agency concerns.

Control	Current	Proponent Post-Exhibition	PPA team Proposed
Application	Warringah LEP 2000 controls continue to apply to land identified as 'deferred matter' in Warringah LEP 2011.	Remove 'deferred matter' status in Warringah LEP 2011.	No change
Zone	Locality B2 – Oxford Falls under Warringah LEP 2000 Warringah LEP 2000 uses localities and permissible uses.	R2 - Low Density Residential C2 - Environmental Conservation RE2 – Private Recreation	R2 - Low Density Residential C2 - Environmental Conservation RE2 – Private Recreation (further increased RE2 land to accommodate land for APZ and road buffers)

Control	Current	Proponent Post-Exhibition	PPA team Proposed
Additional permitted uses	N/A	<ul style="list-style-type: none"> RE2 Private Recreation zone: environmental management works, stormwater services, APZ and bushfire works; and R2 Low-Density Residential Zone: dual occupancy dwellings 	<p>Partially supported</p> <p>Environmental management works and stormwater services in the RE2 zone is supported. However, APZ, is not a land use definition in the Standard Instrument. An alternative permissible term would be 'bush fire hazard reduction work'.</p> <p>Inclusion of dual occupancy dwellings as an additional permitted use in the R2 zone is unnecessary as it is already permitted through Part 12 of the Housing SEPP.</p>
Zone Boundary Clause	N/A	Introduce a zone boundary clause, as per the Standard Instrument Order clause 5.3 between RE2 and R2 zoned land.	<p>Not supported</p> <p>The justification for including the zone boundary clause is to ensure that future roads can still be delivered on site under the circumstances where road layouts need to change once detailed surveys are undertaken.</p> <p>Given that roads are permissible uses in both R2 and RE2 zones, there is no need for this Clause.</p>
Maximum height of the building	N/A	8.5 m	No change
Floor space ratio	N/A	N/A	No change
Minimum lot size	1 dwelling per 20 hectares.	1 dwelling per 200m ² 1 dwelling per 450m ² 1 dwelling per 600m ²	No change
Number of dwellings	0	Maximum cap for 450 dwellings using a local clause.	Maximum cap for 370 dwellings using a local clause.
Affordable Housing Contribution	N/A	Local Provision in the LEP. Rate not determined	Consideration that the existing Clause 6.10 (Affordable Housing) in the Warringah LEP be updated

Control	Current	Proponent Post-Exhibition	PPA team Proposed
			<p>to include a 10% affordable housing requirement on the site.</p> <p>The PPA team also recommends that the Panel request Northern Beaches Council to update their Affordable Housing Contributions Scheme (NBAHC Scheme) to include the subject site (in addition to the LEP Clause update).</p> <p>In acknowledgement of the greenfield nature of the site, and uncertainty whether Council would support changes to its contributions scheme, the PPA team recognise that the 10% affordable housing may need to be delivered through another mechanism should the proposal progress to finalisation with the LPMA.</p>
Development Control Plan	N/A	<p>In response to feedback from the exhibition, the proponent revised their Draft DCP has been prepared that responds to Councils feedback.</p> <p>Alternatively, the proponent requested that the DCP could be made by the Minister should Council refuse to adopt it.</p>	<p>The PPA team has provided the updated DCP to Council for consideration, and recommends that the Panel request Council to review, update (if needed) and adopt the DCP for the site.</p> <p>The PPA team has also recommended the inclusion of a site specific DCP Clause in the WLEP2011, that requires that a DCP (alternatively Concept DA) be approved for the site, prior to consideration of a detailed DA, should the Council refuse to adopt their own DCP.</p>
Number of jobs	N/A	125	No change

5 Next Steps

The Department's regional team (North, Eastern and Central Coast) is the Local Plan-Making Authority (LPMA) for this planning proposal.

The Panel's decision and the final planning proposal will be submitted to the Department through the NSW Planning Portal for finalisation.

The Department will prepare a finalisation report in accordance with the LEP Making Guidelines (Dec 2021) and will determine whether to make the LEP, with or without variation. The Department may defer the inclusion of a matter in the proposed LEP or not make the LEP.

In accordance with section 3.36(1) of the EP&A Act, the Department will organise drafting of the LEP and finalisation of maps and will consult the panel on any draft instrument.

6 Recommendation

Based on this post-exhibition report, it is recommended that the Sydney North Planning Panel determine that the planning proposal should be updated as follows, then submitted to the Department for finalisation:

- Further revised zoning, height of buildings, and lot size maps to incorporate two additional RE2 Private Recreation zones (refer to **Figures 9 – 11** in this report) to function as APZs to the north-east and south-west areas of the property at 20 Morgan Rd;
- Reduce the maximum number of dwellings from 450 to 370 as a local provision in the LEP, for the reasons outlined in **Section 3.4.2** of this report;
- Remove the proposed Standard Instrument Clause 5.3 – Development near zone boundaries;
- Remove dual occupancies as an Additional Permitted Use in R2 zoned land;
- Replace term ‘APZ’ as an Additional Permitted Use in the RE2 zone and replace with ‘bushfire hazard reduction work’;
- Include the subject site within the existing WLEP2011 Clause 6.10 (Affordable Housing) at a contribution rate of 10% and request that Council include it within the Northern Beaches Affordable Housing Contributions Scheme. The PPA team acknowledges that a different mechanism may be required should the planning proposal proceed to finalisation with the LPMA and the above approach cannot be delivered;
- Formally submit the proponent’s updated draft DCP to Council for their review, and request that a site-specific DCP be approved by Council for the site prior to any detailed DA be accepted for assessment. To address the circumstance where Council refuses to endorse a DCP for the site, include a new local provision in the WLEP2011 that requires a site-specific DCP (or alternately a Concept DA) be submitted and approved prior to determination of any detailed DA on the site.

The planning proposal (as amended above) is considered suitable for finalisation because:

- The proposal, subject to the further recommended amendments, demonstrates strategic and site specific merit;
- The conditions of the Gateway have been met;
- Agency and community consultation has occurred in accordance with the Gateway determination; and
- The post-exhibition changes do not alter the intent of the planning proposal and the proposal meets the requirements of the Section 9.1 Directions and other requirements under the Environmental Planning and Assessment Act.

6.1 Attachments

Attachment A – A23 – Consolidated Planning Proposal and attachments (November 2024)

Attachment B – Independent Aboriginal Review - Record of Decision (22 December 2022)

Attachment B1 – Panel – Record of Decision – Submit to Gateway (29 May 2023)

Attachment C – Gateway Determination (9 June 2023)

Attachment C1 – Gateway Alteration (25 July 2024)

Attachment D – Assessment Against Gateway Conditions (November 2024)

Attachment E – Authorisation of exhibition (1 September 2023)

Attachment F – SEPP & DDP Consultation and PP Pre-lodgement consultation table

Attachment G – Consultation Outcomes Report (Mecone, February 2024)

Attachment H – Summary of community submissions and responses Table

Attachment I – Council submission

Attachment J – Agency submissions

Attachment K – Summary of Council and Agency submissions and responses Table

Attachment L – Community submissions (redacted)

Attachment M – Proponent response to community submissions

Attachment M1 – Proponent response to Council and Agency submissions

Attachment N – PPA team independent BDAR peer review (Ecological, October 2024)

Attachment O – Current, Exhibition and PPA Proposed LEP Maps



(Signature)

22/11/24

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27/11/2024

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A/ Executive Director, Local Planning and Council Support

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