

DATE OF DETERMINATION	Wednesday, 11 December 2024
DATE OF PANEL DECISION	Monday, 9 December 2024
PANEL MEMBERS	Peter Debnam (Chair), Blake Cansdale, Steve O'Connor, Annelise Tuor and Graham Brown
APOLOGIES	N/A
DECLARATIONS OF INTEREST	N/A

Public meeting held by Public Teleconference on 9 December 2024, opened at 9:30am and closed at 2:57pm. Papers were circulated electronically on 2 December 2024.

PLANNING PROPOSAL

PP-2022-3802 – Northern Beaches LGA – Morgan Road, Belrose (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4, and the material presented at the briefing listed at item 5 in Schedule 1.

Majority Decision

As the Planning Proposal Authority, the majority of Panel members (Peter Debnam, Blake Cansdale and Steve O'Connor) determined to recommend to the Department of Planning Housing and Infrastructure (the Department) that it continue to liaise with the NSW Rural Fire Service (RFS) in order to ascertain what changes might be required in order to gain the support of the RFS to the Planning Proposal. If the support of the RFS is forthcoming, the Panel would be prepared to recommend to the Minister that the proposed instrument, as described in Schedule 1, should be made, subject to revisions.

Minority Decision

Annelise Tuor and Graham Brown determined not to recommend to the Minister that the proposed instrument, as described in Schedule 1, should be made.

REASONS FOR THE DECISION

The Panel considered the Department's Post-Exhibition Report 2 December 2024 and met with the Department, GYDE Consulting & the Metropolitan Local Aboriginal Land Council (Proponent), Northern Beaches Council, Members of Parliament (both NSW and Commonwealth) and members of the community in a public meeting.

Reasons for the Majority Decision

The majority of Panel members concurred generally with the Department's Post Exhibition Report that the Planning Proposal is capable of demonstrating strategic merit, however did not agree that site-specific merit could be met in terms of bushfire hazard mitigation given the concerns raised by the RFS. The Panel acknowledges that the conditions of the Gateway had been met, agency and community consultation had occurred in accordance with the Gateway Determination and submissions raised, with

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the exception of bushfire hazard, had been adequately addressed.

Whilst agreeing the Planning Proposal, amended to include most of the Post Exhibition Report recommendations, warranted support, the Panel believes that bushfire risk and zoning are unresolved and need further consultation with the RFS, in relation to bushfire risk, and the Northern Beaches Council in relation to zoning.

Mitigation of bushfire risk had been canvassed extensively throughout the assessment of the Planning Proposal and while considerable work had been done to resolve that risk, the endorsement of the RFS had unfortunately not been obtained. The Panel notes that in its most recent correspondence dated 15 October 2024, the RFS maintained its opposition to the Planning Proposal proceeding further as it had failed to adequately address all relevant requirements of Planning for Bushfire Protection 2019. The RFS did state in the second last paragraph of its correspondence dated 15 October 2024 *“While I understand that while this decision may disappoint many, the RFS remains committed to working with the Department of Planning, Housing & Infrastructure in terms of how our concerns in respect of the Planning Proposal may be addressed.”*

Similarly, in the final sentence of earlier RFS correspondence dated 9 November 2023, the RFS had stated that *“Additional bushfire protection measures will need to be proposed to further mitigate the risk to an acceptable level.”*

It was therefore recommended that the Department and Proponent further engage with the RFS to resolve all outstanding concerns.

Additionally, it is recommended there may be further discussions between the Department, Proponent and Northern Beaches Council in relation to potentially amending the R2 zoning to a C3 zoning to remove certain permissible land uses that are not considered suitable in this location.

Following resolution of outstanding concerns related to bushfire and potential amended zoning, the Panel requests that the Department provide a summary report outlining the outcomes of consultation with Council and the RFS and demonstrating how those issues have been resolved. This report is to be made publicly available on the NSW Planning Portal.

Reasons for the Minority Decision

The minority of Panel members acknowledged that the site’s constraints, including its steep topography, high bushfire risk and large extent of natural vegetation are significant factors that the Planning Proposal has sought to address. In balancing the benefits of providing 370-450 additional dwellings and the aim of the proponent, MLALC, to achieve self-determination through economic development, against the impacts likely to result from development envisaged under the Planning Proposal, it was concluded that the impacts of the proposed development outweigh the benefits.

In particular, it was noted that despite numerous amendments and further information, the RFS and Biodiversity, Conservation and Science Group (BCS) remained unsupportive of the Planning Proposal.

The site and surrounding area are high bushfire risk. Given the RFS advice, it was noted that the Planning Proposal is inconsistent with Direction 4.3. As *“written advice from the Commissioner of the NSW Rural Fire Service to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal”* has not been obtained, this inconsistency has therefore not been justified. Consequently, the minority were of the opinion, that in the absence of RFS support for the Planning Proposal, it should not be made by the Minister.

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Similarly, the loss of native vegetation was also likely to be considerable given the extent of changes to the site required to provide low density residential development. There remained uncertainty on the impact on threatened species and Narrabeen Lakes Catchment, which were also fundamental to the strategic consideration of the site’s suitability for the development and should not be deferred to the development application stage.

In addition, the steepness of the site, exacerbates issues relating to road gradients and pedestrian accessibility, measures to address bushfire threats and stormwater disposal. To address these and other matters, such as relocating the overhead power lines and provision of infrastructure, will require the removal of most of the vegetation within the development area (proposed R2 and RE2 zones) and result in significant changes to the landform of the site. The constraints and sensitive nature of the site do not lend themselves to the deferral of such important matters to later stages of the development process.




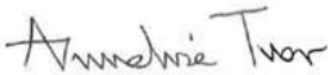

The minority were also of the opinion, that given the constraints of the site, the number of amendments and amount of information that has already been provided, and the time and effort that has been spent meant that further deferral of the Planning Proposal would be unlikely to resolve the potential impacts of future development on the site to an acceptable level.

It was concluded that the Planning Proposal does not have sufficient site-specific merit to proceed.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included: impact on flora and fauna; bushfire risk; infrastructure and services; strategic planning objectives; traffic; impact on waterways; rezoning precedent; loss of cultural heritage; housing supply; scale and process.

The majority of Panel members consider that the concerns raised by the community have been adequately considered in the Department’s Post-Exhibition Report and this Record of Decision, with the exception of bushfire risk.

PANEL MEMBERS	
 Peter Debnam	 Stephen O'Connor
 Blake Cansdale	 Annelise Tuor
 Graham Brown	

SCHEDULE 1		
1	PANEL REF – LGA – PLANNING PROPOSAL NO. – ADDRESS	PP-2022-3802 – Northern Beaches LGA – Morgan Road, Belrose
2	LEP TO BE AMENDED	Warringah Local Environment Plan (2011) [Note – site currently deferred from WLEP2011 and sits within Warringah Local Environmental Plan 2001]
3	PROPOSED INSTRUMENT	<p>The post-exhibition planning proposal seeks to amend Warringah Local Environmental Plan (LEP) 2011 to:</p> <ul style="list-style-type: none"> • Remove ‘deferred matter’ status in Warringah LEP 2011; • Rezone site from B2 – Oxford Falls to part R2 – Low Density Residential, part C2 – Environmental Conservation and part RE2 Private Recreation; • Add Additional Permitted Uses for <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; • 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; • Establish the maximum allowable building height of 8.5m; • Decrease the minimum lot size from 1 dwelling per 20 hectares to part 1 dwelling per 200m², part 1 dwelling per 450m² and part 1 dwelling per 600m²; • Establish a maximum cap for 450 dwellings using a local clause; and • Affordable housing to be included as a Clause in the LEP, but rate to be based on project feasibility.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Department Planning, Housing and Infrastructure Post Exhibition Report, 2 December 2024 • Written submissions during public exhibition: 3633 • Verbal submissions at the Panel’s public meeting: 9:30am – 2:57pm, 9 December 2024: <ul style="list-style-type: none"> ○ Registered individual speakers: Gregory William Grace, Jenny Cullen, Fiona Dingwall, Anthony Harris, Sarah Stambolieff, Morgan Foster Morris, Sonia Powell, Edwina Laginestra, David Rohr, Rachael Jackson, Wendy Gleen, Yvette Eunson, Michael Childs, Ethan Hrnjak, Elaway Dalby-Ball, Fiona Baker, Dylan Conley, Thea Harris, Margaret Woods, Dennis Turkovic, Lauren Kajewski, Joanna Mawson-Lee, Christine Couley, Keelah Lamb, Daniel Schnipper, Ann Sharp, Jo Tauro, Angus Gordon OAM, Marion Kiss, Jacqueline Marlow, Amanda Jane Reynolds, Robyn Wood, Heidi Hardy and Tashinka Pearl. ○ Register Speakers on behalf of community groups: Neil Evers for Budawa Aboriginal Signage Group, Tina Weldon-West for Darkinjung Local Aboriginal Land Council, Jayson Cooke for bungaree.org, Kristyn Glanville for Northern Beaches Envirolink Inc, Janine Kitson for Friends of Ku-ring-gai Environment (FOKE), Dr Conny Harris for Garigal Landcare, Pamela Dawes for Australian Plant Society, Ron Patton for Friends of Narrabeen Lagoon Catchment, Timothy Maguire for Northern Beaches

		<p>Climate Action Network, Joe Earl for Australian Conservation Foundation Beaches Community Group, Nicole Romain for Save the Northern Beaches Bushlands, Jacinta Nicholls for Coastal Environmental Alliance, Ann Collins for Save Manly Dam Catchment Committee, Dennis Jones for Guringai Garigal Mob Bloodline Custodians, Deborah Harris for Belrose Rural Community Association, Lisa Bellamy for Kariong Progress Association, Katherine Jones for Lynhurst Estate Strata Committee, Michael Regan MP NSW Member for Wakehurst, Dr Sophie Scamps MP Federal Member for Mackellar, Jacqui Scruby MP member for Pittwater and Matt Cross MP Member for Davidson.</p> <ul style="list-style-type: none"> ○ On behalf of Northern Beaches Council: Malcom McDonald, Executive Manager Strategic and Place Planning. ○ On behalf of the proponent: Juliet Grant (Gyde), Nathan Moran (CEO ,MLALC), Yvonne Weldon (MLALC), Rebecca Hogan (Hays Environmental) , Dr Graham Douglas (Bushfire expert) and Andrew Halmarick (Colliers).
5	<p>SITE INSPECTIONS AND BRIEFINGS BY THE PANEL</p>	<ul style="list-style-type: none"> ● Site Inspection with Department of Planning, Housing & Infrastructure (DPHI): 10:30am – 11:21am, 26 November 2024 <ul style="list-style-type: none"> ○ Panel members: Peter Debnam (Chair), Blake Cansdale, Steve O’Connor, Annelise Tuor and Graham Brown ○ DPHI staff: Jazmin Van Veen, Angela Hynes, Rohan Johnston, Louise McMahon, Kate Bartlett (consultant), Murray Jay, Aoife Wynter, Kate McKinnon and Adam Williams ○ Key Issues Discussed: <ul style="list-style-type: none"> ● Site locality, surrounding context, road network and site constraints ● Indigenous significance and sensitivity ● Community opposition ● Fire hazard and agency consultation ● Existing vegetation and magnitude of work required for development ● Infrastructure required and feasibility ● Power infrastructure installed in rock platform ● Panel Briefing with Department of Planning, Housing & Infrastructure (DPHI): 10:30am – 11:35am, 2 December 2024 <ul style="list-style-type: none"> ○ Panel members: Peter Debnam (Chair), Blake Cansdale, Steve O’Connor, Annelise Tuor and Graham Brown ○ DPHI staff: Jazmin Van Veen, Angela Hynes, Louise McMahon, Kate Bartlett (consultant), Ian Woods, Kate McKinnon and Adam Williams ○ Key Issues Discussed: <ul style="list-style-type: none"> ● Fire hazards and the RFS position on the proposal ● Updated post-exhibition proposal changes ● Intended infrastructure for site ● Potentially reducing the yield and the outcomes this would achieve ● Environment, biodiversity and BCS stance ● Strategic Planning Framework and draft DCP ● Affordable Housing

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		<ul style="list-style-type: none">• Community concerns and submissions summary• Panel Determination: 2:59pm – 4:02pm, 9 December 2024<ul style="list-style-type: none">○ Panel members: Peter Debnam (Chair), Blake Cansdale, Steve O’Connor, Annelise Tuor and Graham Brown○ DPHI staff: Jazmin Van Veen, Louise McMahon, Ian Woods, Kate Bartlett (consultant), Kate McKinnon, Taylah Fenning and Adam Williams
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