



northern
beaches
council

AGENDA

Notice is hereby given that an Extraordinary Meeting of Council will be held at the Civic Centre, Dee Why on

Tuesday 24 January 2023

Beginning at 10:00am for the purpose of considering and determining matters included in this agenda.

A handwritten signature in black ink, appearing to read 'Ray Brownlee', with a long horizontal stroke extending to the right.

Ray Brownlee PSM
Chief Executive Officer

OUR VISION

Delivering the highest quality service valued and trusted by our community

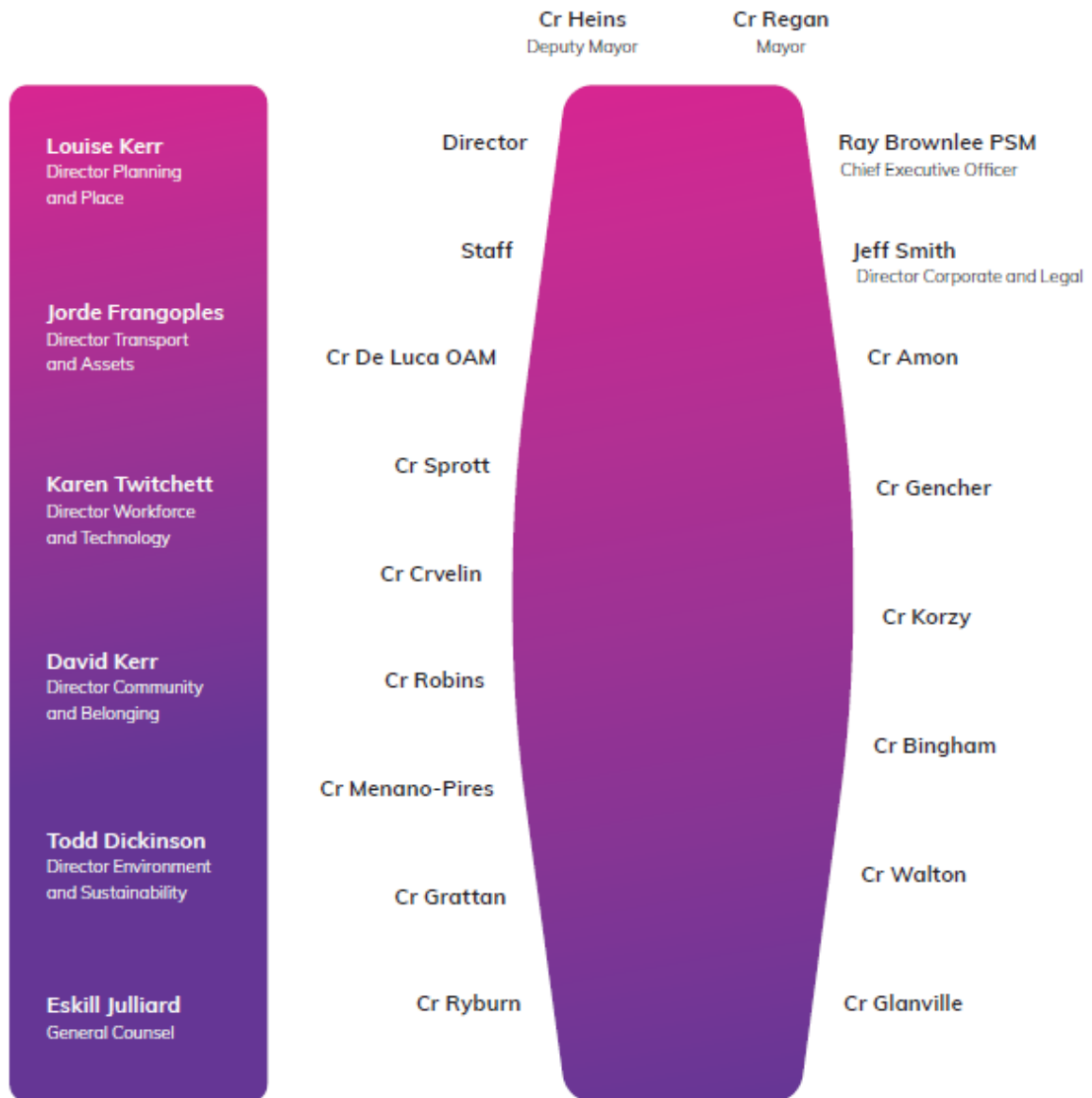
OUR VALUES

Trust Teamwork Respect Integrity Service Leadership

OUR OBLIGATIONS

I swear/solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of the Northern Beaches and the Northern Beaches Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgement.

Council Chambers Seating Plan



**Agenda for an Extraordinary Meeting of Council
to be held on Tuesday 24 January 2023
at the Civic Centre, Dee Why
Commencing at 10:00am**

1.0	ACKNOWLEDGEMENT OF COUNTRY	
2.0	APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE	
3.0	DISCLOSURES OF INTEREST	
4.0	PUBLIC ADDRESS	
11.0	PLANNING AND PLACE DIVISION REPORTS	6
11.1	Planning Proposal Panel Decision - Morgan Road, Belrose (Lizard Rock)	6

1.0 ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, Northern Beaches Council acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

2.0 APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE

In accordance with Part 6 of the Code of Meeting Practice, apologies must be received and accepted from absent Councillors and a leave of absence from the Council meeting may be granted.

3.0 DISCLOSURES OF INTEREST

In accordance with Part 17 of the Code of Meeting Practice, all Councillors must disclose and manage any conflicts of interest they may have in matters being considered at the meeting.

4.0 PUBLIC ADDRESS

In accordance with Part 5 of the Code of Meeting Practice, residents, ratepayers, applicants or other persons may request to address Council in relation to no more than two matters which are listed for consideration on the agenda.

11.0 Planning and Place Division Reports

ITEM 11.1	PLANNING PROPOSAL PANEL DECISION - MORGAN ROAD, BELROSE (LIZARD ROCK)
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2023/014157
ATTACHMENTS	1 ⇒ Northern Beaches Council Submission - Lizard Rock, Morgan Road, Belrose 2 ⇒ Planning Proposal - Morgan Road Belrose - Record of Decision 3 ⇒ Planning Proposal - Morgan Road Belrose - Letter to Council of Panel Decision 4 ⇒ Planning Proposal - Morgan Road Belrose (Lizard Rock) - Council Report 22 November 2022

SUMMARY

PURPOSE

To advise Council of the decision of the Strategic Planning Panel of the Sydney North Planning Panel to recommend that the planning proposal for Morgan Road, Belrose (Lizard Rock) proceed to Gateway determination and to seek Council's approval to decline the offer to be the Planning Proposal Authority for the planning proposal.

EXECUTIVE SUMMARY

On 27 October 2022, Council was notified by the Department of Planning and Environment (the Department) that a planning proposal prepared on behalf of the Metropolitan Local Aboriginal Land Council (MLALC), dated October 2022, had been submitted for independent review by the Strategic Planning Panel of the Sydney North Planning Panel (the Panel) for Morgan Road, Belrose (Lizard Rock). The notification invited comments within 28 days.

The planning proposal seeks to:

- remove the "deferred status" of the site by moving it from Warringah Local Environmental Plan 2000 into Warringah Local Environmental Plan 2011
- rezone the land for residential (R2 low density) and conservation (C2 Environmental Conservation) purposes
- introduce a maximum height of buildings of 8.5 metres
- apply a dwelling cap control (450 dwellings) instead of minimum lot size provisions.

The planning proposal also seeks to accommodate a variety of residential uses, including dual occupancy, secondary dwellings, seniors housing, as well as road and stormwater management infrastructure, a community cultural centre and open space/recreation areas.

At its meeting on 22 November 2022, Council considered a report on the planning proposal and resolved to make a submission (Attachment 1) to the Department. This submission was forwarded to the Department on 24 November 2022 for consideration by the Panel.

In summary, Council's submission opposed the granting of a Gateway approval for the planning proposal for the following reasons:

- Inconsistency with key strategies
- Non-compliant process
- Short consultation timeframe of 28 days
- Significant inconsistencies within planning proposal documentation, particularly with respect to the number of dwellings or lots and zoning
- Inconsistency with the Conservation Zones Review
- Enormous loss of high biodiversity habitat
- Bushfire impacts
- Insufficient Affordable Housing
- Unjustified and outdated urban design
- Insufficient survey work of Aboriginal heritage
- Proposed slip lane on Forest Way is on Council land
- Major impacts on waterways
- Slope instability
- Insufficient information regarding stormwater infrastructure impacts
- Insufficient information about economic and social impact
- Insufficient modelling of traffic and transport and Active Transport proposals
- Insufficient emergency evacuation modelling
- Inconsistencies in documentation regarding infrastructure provision
- Additional infrastructure demand not adequately addressed, and
- The Voluntary Planning Agreement (VPA) provides for critical infrastructure and is not a contribution for a public purpose.

The planning proposal, Council's submission and a briefing report provided by the Department were considered by the Panel on 21 December 2022 (following briefings by the Department, Council and the Proponent). The briefing report from the Department provided a dot point summary of the key issues from the viewpoint of Council and the proponent, without providing any analysis of the merits of the associated issues, conclusions or recommendations.

On 22 December 2022 the Panel determined that the planning proposal should be submitted to the Department for a Gateway determination (Attachment 2) subject to the following qualifications:

- *The number of dwellings is to be capped at 450;*
- *10% affordable housing is to be provided;*
- *The final zoning arrangements and boundaries are to be resolved to maximise the retention of important biodiversity values; and*

- *A site specific DCP, to guide future development to deliver on the objectives and intended outcomes of the Proposal, is to be finalised in consultation with Council and the Department before exhibition of the planning proposal.*

The Panel's Record of Decision (Decision) provided limited reasoning for a decision of this magnitude and impact (5 short paragraphs). No meaningful analysis or evaluation of the issues relevant to the planning proposal was provided in the Decision or the Department's briefing report. No detailed justification as to how the Panel reached its conclusion was provided in the Decision or the Department's briefing report. No meaningful discussion was provided in the Decision or the Department's briefing report as to how the significant issues raised by the Council can be overcome. Due to the paucity of analysis or explanation, there is limited opportunity for Council or the community to understand why or how this decision has been made.

Correspondence from the Chair of the Panel advising Council of the Panel's decision also included an invitation for Council to be the Planning Proposal Authority (PPA) for the planning proposal (Attachment 3).

The Department's Local Environmental Plan Making Guideline describes the PPA as the "*authority responsible for the governance of the planning proposal, including its preparation and submission to the Department for a Gateway determination, satisfying the conditions of a Gateway determination, public exhibition and its finalisation (including submission to the Department for finalisation, where required)*".

The letter at Attachment 3 states that Council has 42 days (until 2 February 2023) to advise the Planning Panel's Secretariat whether it accepts the offer to be the PPA for the planning proposal.

The letter at Attachment 3 further states that should Council accept the PPA role, it has a further 42 days to prepare a planning proposal under section 3.33 of the *Environmental Planning and Assessment Act 1979* and submit it to the Department for a Gateway determination. Should Council not accept the PPA role, the Panel will be appointed as the PPA.

If Council accepted the PPA role:

- The letter at Attachment 3 states that Council would be obliged to progress the planning proposal
- By progressing the planning proposal, the community may perceive that Council supports the planning proposal, which is contrary to Council's decision of November 2022.

It is considered that Council should not accept the PPA role because:

- Council's decision of November 2022 indicates it does not support the planning proposal
- While the PPA role involves the exercise of statutory functions and duties, these are unlikely to provide Council with any meaningful additional powers to question or seek review of any Gateway approval issued by the Minister or his delegate
- Due to the limited timeframe imposed and the work that staff consider would be required in respect of the planning proposal, Council could not properly discharge the requirements of the role to prepare a planning proposal for a rezoning of this scale and impact. Peer review of the technical reports and their conclusions and recommendations is required including consideration of the suitability of this site for development at the intensity and scale proposed.

If the Panel is appointed as the PPA, the planning proposal would likely proceed as follows:

- The Panel prepares the planning proposal and submits it to the Department for a Gateway determination

- The Department (as delegate of the Minister) would determine whether to grant a Gateway approval for the planning proposal
 - If a Gateway approval is granted, the planning proposal will be placed on public exhibition – Council and the community would have opportunity to make submissions at this time
 - The Panel as the PPA must consider all submissions and the proponent's response, and report this to the Department with a recommendation whether to finalise the making of an amending LEP
 - The Department prepares the instructions for the Parliamentary Counsel's Office (PCO) to draft any new LEP, finalise and then make the LEP, and issues the notification.
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RECOMMENDATION OF EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING

That Council:

1. Note the decision of the Strategic Planning Panel of the Sydney North Planning Panel that the planning proposal for Morgan Road, Belrose (Lizard Rock) proceed to a Gateway determination.
 2. Decline the offer to be the Planning Proposal Authority for the planning proposal and notify the Planning Panel's Secretariat of Council's decision by 2 February 2023.
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REPORT

BACKGROUND

On 5 August 2022, State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) was amended to include six (6) sites owned by the Metropolitan Aboriginal Land Council (MLALC). The Northern Beaches Aboriginal Land Development Delivery Plan (DDP) was also approved by the Minister for Planning.

The DDP identifies all the MLALC's landholdings, however, sets out MLALC's objectives for the six sites included in the Planning Systems SEPP, the nature of development proposed, the basis on which the development is proposed, and strategies and actions to achieve those objectives.

The Planning Systems SEPP:

- requires the consideration of the DDP (in part) in the assessment of any development application for the land
- operates to make the Regional Planning Panel, not Council, the consent authority for a development application with a value exceeding \$5m or with more than 50 submissions or where Council takes longer than 60 days to determine the development application. Council would only have power to exhibit, assess and provide a recommendation to the Panel on whether the development should be approved.

In addition:

- Local Planning Direction 1.2 requires the local planning authority to take into account the DDP in the preparation of any planning proposal; and
- the Department of Planning established an administrative process via Planning Circular PS 22- 001, whereby MLALC can request the Regional Planning Panel to review a planning proposal before a Planning Proposal Authority is appointed and before the planning proposal is submitted to the Department for a "Gateway" determination.

Independent review of planning proposals for identified Aboriginal land

Planning Circular PS22-001 provides that an independent planning proposal review may be requested by a Local Aboriginal Land Council (LALC) before a planning proposal has been submitted to the Department for a Gateway determination.

These reviews are carried out by regional or Sydney planning panels or the Independent Planning Commission for the City of Sydney (the Commission).

A LALC can request an independent proposal review if:

- a. the land is subject to a development delivery plan made under the Aboriginal Land SEPP; or
- b. if no development delivery plan has been published, the interim development delivery plan for the land published on the Department's website.

In the case of the Lizard Rock planning proposal, the land is subject to a DDP.

On 27 October 2022, Council was notified by the Department of Planning and Environment that a planning proposal prepared on behalf of Metropolitan Local Aboriginal Land Council (MLALC), dated October 2022, had been submitted for independent review by the Panel for land known as Morgan Road, Belrose (Lizard Rock) which forms a site within the DDP.

Planning Proposal

The planning proposal (see Attachment 4 for a detailed summary of the planning proposal within the report to the 22 November 2022 Council meeting), prepared by MLAC seeks to:

- remove the “deferred status” of the site by moving it from Warringah Local Environmental Plan 2000 into Warringah Local Environmental Plan 2011
- rezone the land for residential (R2 low density) and conservation (C2 Environmental Conservation) purposes
- introduce a maximum height of buildings of 8.5 metres
- apply a dwelling cap control (450 dwellings) instead of minimum lot size provisions.

The planning proposal also seeks to accommodate a variety of residential uses, including dual occupancy, secondary dwellings, seniors housing, as well as road and stormwater management infrastructure, a community cultural centre and open space/recreation areas.

Site Description

The subject site (Figure 1) is an amalgamation of 22 allotments and the 2 roads on site with a total area of 701,000sqm (70.1ha).

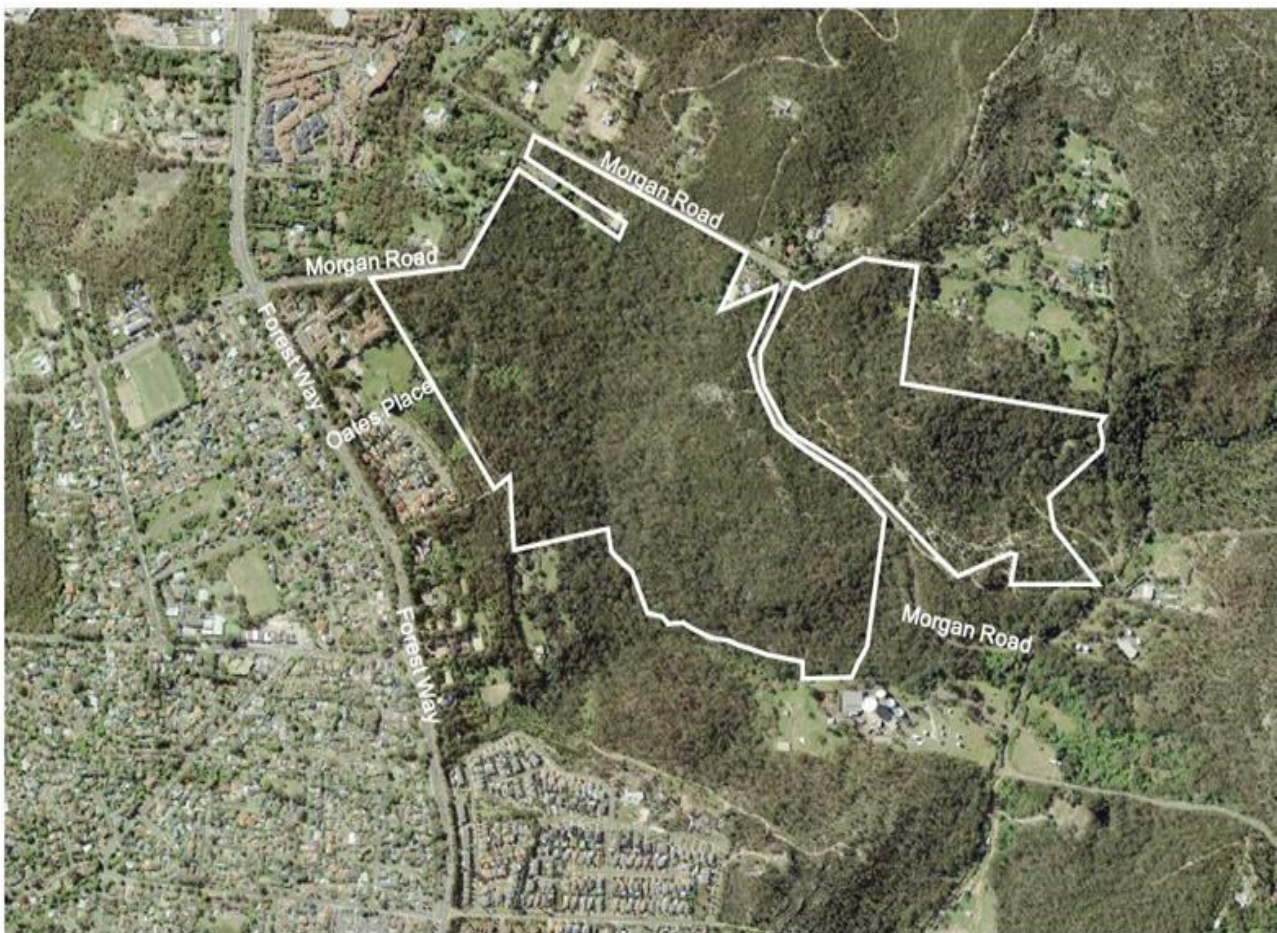


Figure 1: Subject site – outlined in white

Submission

At its meeting on 22 November 2022, Council considered a report on the planning proposal and resolved to make a submission to the Department. This was forwarded to the Department on 24 November 2022 for consideration by the Panel.

Whilst acknowledging the importance of the NSW *Aboriginal Land Rights Act 1983* in redressing longstanding injustices to Aboriginal peoples and the overarching objective of the Planning Systems SEPP to aid Aboriginal People to achieve economic self-determination, Council's submission opposed the issue of Gateway determination for the planning proposal for multiple reasons, including:

- **Inconsistency with Strategy** - The planning proposal does not demonstrate strategic merit and is inconsistent with key aspects of the Greater Sydney Region Plan, North District Plan, Northern Beaches Local Strategic Planning Statement - *Towards 2040* and Northern Beaches Local Housing Strategy.
- **Non-compliant process** - There has been no formal pre-lodgement consultation with Council on the planning proposal, as required by the *Local Environmental Plan Making Guideline* and as recommended by the consultation outcomes report prepared by WSP consultants on behalf of the Department following exhibition of the *SEPP (Planning Systems) 2021 Aboriginal Lands & draft Northern Beaches Aboriginal Land Development Delivery Plan*.
- **Short Consultation Timeframe** – The 28-day timeframe to review the application and associated technical reports for a complex proposal with almost 1,400 pages of documentation and then prepare a meaningful response is considered unreasonable.
- **Significant inconsistencies within planning proposal documentation** – for example:
 - Vaguely referring to 450 “dwellings” and 450 “lots”. 450 lots have the potential to create double or triple that number of “dwellings” if seniors housing and dual occupancy is permitted, as proposed. This has major impacts on all aspects of the proposal.
 - Referring to proposed B1 zone and RE2 zone for up to 5000 sqm of neighbourhood shops, supermarkets, medical centre and office and childcare facilities (page 63), inconsistent with zoning maps which include only residential and conservation zones.
 - Referring to securing “*additional permitted uses...for dual occupancies and seniors housing, as well as community facilities*” in the residential zone (page 5) whilst elsewhere stating “*the proposal does not involve “inappropriate development” such as schools or retirement villages*” (pages 42 & 101). This is reiterated in the Travers Bushfire and Ecology report (p vii) documents and is critical to consideration of bushfire and infrastructure requirements.
- **Inconsistency with Conservation Zones Review** - The planning proposal is inconsistent with Council's Conservation Zones Review which recommends applying a C3 Environmental Management Zone to most of the site due its high environmental value.
- **Enormous loss of high biodiversity habitat** - The planning proposal would facilitate development that would result in approximately 44.7 hectares (an area equivalent to approximately 45 rugby fields) being cleared, and a further 6.9 hectares (including threatened species) subject to indirect impacts, resulting in significant impacts on core habitat, known habitat for various threatened species of flora and fauna, and Threatened Ecological Communities (TECs), contrary to adopted policy and the NSW *Biodiversity Conservation Act 2016*.

- **Bushfire** – The planning proposal has been developed on the premise of evacuation being provided via 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 key aspects have not been demonstrated, yet these are fundamental enabling provisions for the proposal. If one or both 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.
- Some discrepancies are also noted that need to be clarified, for example, the proposal seeks to secure additional permitted uses within the R2 zone for residential land uses such as “dual occupancies, seniors development and community facilities” (p.5, Gyde Consulting) – yet this is at odds with later statements that “The proposal does not involve ‘inappropriate development’ such as schools or retirement villages.”
- In its current form, the proposed development presents an unacceptable and, in some cases, a catastrophic risk to future residents. It is unclear whether utility services (electricity and water) identified to service the site are adequate in terms of bush fire risk. Further information is required.
- **Insufficient Affordable Housing** - The planning proposal is inconsistent with Council’s Affordable Housing Policy and Local Strategic Planning Statement which seek 10% affordable rental housing for all strategic plans and planning proposals for up-zoning, urban renewal or greenfield development (the proposed contribution of \$2.5 million is well below 10%).
- **Unjustified and outdated urban design** - The urban design concept has not been justified by comparing alternative settlement options; does not sufficiently account for the site constraints and location; mimics the urban form of the 1970’s by creating a sparse, isolated, car-reliant, enclave; and does not make clear how the proposed new settlement relates to or integrates with Belrose.
- **Insufficient survey work of Aboriginal heritage** - The planning proposal provides only basic information about the known Aboriginal sites and potential for unrecorded sites at Lizard Rock. There is insufficient information provided about the survey work, the current sites in their context, best management options for the site and steps for further investigation. Site mapping of the rock engravings is of a very general nature and likely to be inaccurate and the report fails to demonstrate the significance of the rock engraving sites and how the proposal can safeguard them from current and future impacts as part of a managed visitor experience.
- **Proposed slip lane on Forest Way is on Council land** - The land identified to accommodate the future slip lane is owned by Council, is zoned RE1 – Public Recreation, is classified as Community Land, and has not been specifically identified in the planning proposal document. The land is part of a broader vegetated buffer along both sides of Forest Way from Morgan Road extending 1.4km south to Dawes Road and provides visual treatment and noise attenuation between the busy road corridor and adjacent developments. No discussions have taken place with Council about the use of this land. Any proposition to include Council’s land for road widening requires a Council resolution as the landowner before contemplating a reclassification of land under the *Local Government Act 1993* and rezoning of that land to reflect the new public purpose.
- **Major impacts on waterways** - 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. It is inconsistent with adopted waterway related policy and strategy documents published by both the NSW Government and Northern Beaches Council.

- **Slope instability** – The planning proposal identifies sites which could have potential 'moderate' or 'high' slope stability risk and would require slope stability remedial measures. Construction of infrastructure and changes to land formation due to the proposed development would increase this slope stability risk.
- **Insufficient information regarding stormwater infrastructure impacts** – The planning proposal provides insufficient information to adequately have regard for the considerable infrastructure upgrades necessary to support the development. New roads are proposed on valley slopes that exceed the maximum grades recommended by Austroads. Due to the steep grades and geotechnical conditions, concern is raised about the long term adverse and cumulative impacts of the proposed development on flood behaviour and performance of the stormwater detention system.
- **Insufficient information about economic and social impact** – The planning proposal estimates an increase in population from the proposed development of 1,428 people, 20 to 140 jobs post construction, and over 5,000 sqm retail and services floorspace. Insufficient information is provided about the staging of new retail and services development, potential impacts on existing or planned commercial centres, the likely social impacts (positive and negative) of the proposal, and demand on social infrastructure.
- **Insufficient modelling of traffic and transport and Active Transport proposals**– The modelling fails to consider impacts on the broader Morgan Road corridor. Morning peak northbound queuing at the Morgan Road / Wakehurst Parkway intersection increases by over 150m. There is no modelling of the intersection of Oxford Falls Road and Wakehurst Parkway (known blackspot location). There is also no supporting modelling to demonstrate no net impact on the adjoining intersections along the Forest Way or Wakehurst Parkway corridors. Active transport planning is insufficient, appearing as an afterthought rather than the focus for the new development as required under Council's MOVE Strategy. Suitable bus infrastructure at the three main points serviced should be considered.
- **Insufficient emergency evacuation modelling** – The modelling does not demonstrate the real time evolving situation and does not consider the broader area impacts. Further modelling is required about how the emergency would evolve on a variety of scenario events. Modelling of a worst-case scenario is required, involving full evacuation including traffic from the areas to the north simultaneously being evacuated along Forest Way, movements required to facilitate the assisted evacuation of the nearby Seniors Living developments and the inability of traffic to filter through the network to the north, west and east.
- **Inconsistencies in documentation regarding infrastructure provision** – It is not clear how and where community facilities will be provided as no zoning for this land is indicated. Various references to 450 dwellings versus 450 lots have significant infrastructure implications.
- **Additional infrastructure demand not adequately addressed** - The planning proposal generates additional demand for Community Facility floorspace, Library Services floorspace, Open Space, Active Transport, and traffic infrastructure which cannot all be met on-site. The application of Council's "standard" Section 7.12 Contributions Plan to address these matters will not cover the cost of this infrastructure – a new separate Section 7.11 Contributions Plan is required.
- **Voluntary Planning Agreement (VPA)** – The VPA provides for critical infrastructure needed for the creation and registration of serviced land ready for sale at market, it is not a contribution for a public purpose. The affordable housing offer (\$2.5m) is inconsistent with Council's Affordable Housing Policy and Local Strategic Planning Statement requirements.

Strategic Planning Panel of the Sydney North Planning Panel

The planning proposal, Council's submission and a briefing report provided by the Department were considered by the Panel on 21 December 2022 (following briefings by the Department, Council and the Proponent). The briefing report from the Department only provided a dot point summary of the key issues from the viewpoint of Council and the proponent without providing any analysis of the merits of the associated issues, conclusions or recommendations.

On 22 December 2022 the Panel determined that the planning proposal should be submitted to the Department for a Gateway determination subject to the following qualifications:

- *The number of dwellings is to be capped at 450;*
- *10% affordable housing is to be provided;*
- *The final zoning arrangements and boundaries are to be resolved to maximise the retention of important biodiversity values; and*
- *A site specific DCP, to guide future development to deliver on the objectives and intended outcomes of the Proposal, is to be finalised in consultation with Council and the Department before exhibition of the planning proposal.*

The Panel's Record of Decision (Record) provided limited reasoning for a decision of this magnitude and impact (5 short paragraphs). No meaningful analysis or evaluation of the issues relevant to the planning proposal was provided in the Record. No detailed justification as to how the Panel reached its conclusion was provided in the Record. No meaningful discussion in the Record was provided as to how the significant issues raised by the Council can be overcome. Due to the paucity of analysis or explanation, there is limited opportunity for Council or the community to understand why or how this decision has been made.

Planning Proposal Authority Role

Correspondence from the Chair of the Panel advising Council of the Panel's decision (refer Attachment 3), also included an invitation for Council to be the Planning Proposal Authority (PPA) for the planning proposal.

The Department's Local Environmental Plan Making Guideline describes the PPA as the "*authority responsible for the governance of the planning proposal, including its preparation and submission to the Department for a Gateway determination, satisfying the conditions of a Gateway determination, public exhibition and its finalisation (including submission to the Department for finalisation, where required)*".

The letter at Attachment 3 indicates that Council has 42 days (until 2 February 2023) to advise the Planning Panel's Secretariat whether it accepts the invitation to be the PPA for the planning proposal.

Should Council accept the PPA role, the letter at Attachment 3 indicates that Council has a further 42 days to prepare a planning proposal under section 3.33 of the *Environmental Planning and Assessment Act 1979* and submit it to the Department for a Gateway determination. Should Council not accept the PPA role, the Panel will be appointed as the PPA.

If Council accepted the PPA role:

- Council would be obliged to progress the planning proposal. In particular, the correspondence from the Chair of the Strategic Planning Panel of the Sydney North Planning Panel provides, inter alia, as follows:

“Should Council agree to be the PPA, it will need to prepare a planning proposal under section 3.33 of the Environmental Planning and Assessment Act 1979 and submit it for a Gateway determination within 42 days after accepting this role.”

Further to the above, Section 3.32(2) of the *Environmental Planning and Assessment Act 1979* provides as follows:

The Minister may direct that the Planning Secretary (or any such panel, person or body) is the planning proposal authority for a proposed instrument in any of the following cases –

.....

(c) the Planning Secretary, the Independent Planning Commission or a Sydney district or regional planning panel has recommended that the proposed instrument should be submitted for a determination under section 3.34 (Gateway determination) or that the proposed instrument should be made,

.....

(d) the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,

Accordingly, if Council *failed to comply with its obligations* with respect to the planning proposal, the Minister is able to remove Council from the role of PPA.

- By progressing the planning proposal, the community may perceive that Council supports the planning proposal, which is contrary to Council’s decision of November 2022.

It is considered that Council should not accept the PPA role because:

- Council’s decision of 22 November 2022 indicates it does not support the planning proposal. Specifically, on 22 November 2022, Council resolved to forward a detailed submission to the Department that outlined extensive issues as to why the planning proposal should not be progressed.
- The PPA role is unlikely to provide Council with any meaningful additional powers to question or seek review of any Gateway approval issued by the Minister or his delegate. The Department’s *Local Environmental Plan Making Guideline* (September 2022) (the Guideline) sets out a detailed explanation of the steps of the NSW Local Environmental Plan (LEP) making process. In relation to the Gateway Review process, the Guideline provides for the circumstances when a proponent or council may request a Gateway review as follows:

A proponent or council (only when it is the PPA) may request that the Minister (or delegate) alter a Gateway determination where the proponent and/or council disagrees with the determination or conditions of the determination and seeks to alter this decision.

Specifically, this review may be requested when a Gateway determination:

- *States the planning proposal should not proceed*
- *Requires that the planning proposal should be altered and re-submitted to which the proponent or council thinks this should be reconsidered (sic), or*
- *Imposes conditions (other than consultation requirements) in the Gateway determination or imposes conditions that require variation to the proposal, for which a proponent and/or council thinks should be reconsidered*

Having regard for the circumstances of this planning proposal, the limited options available to seek a Gateway Review are not considered to be viable opportunities to seek a meaningful review of the planning proposal.

- Due to the limited timeframe imposed and the work staff consider is required in respect of the planning proposal, Council could not properly discharge the requirements of the role to prepare a planning proposal for a rezoning of this scale and impact. Peer review of the technical reports and their conclusions and recommendations is required including consideration of the suitability of this site for development of the intensity and scale proposed.

Gateway Determination

Should Council decline the invitation to be the PPA, the planning panel would take on the PPA role and prepare the planning proposal and submit it to the Department for Gateway determination.

The Minister (or delegate) will then determine whether to progress the planning proposal to a Gateway determination.

Public Exhibition, Assessment and Post Exhibition

If it is determined by the Minister (or delegate) to progress the planning proposal to Gateway determination, the planning proposal would be placed on public exhibition, allowing the community and Council the opportunity to make submissions. Submissions would be reviewed by the PPA, and the planning proposal altered if required to address issues raised in submissions or to address conditions of the Gateway determination (see *Figure 2*).

The proponent has the option to respond to any issues raised in the submissions, which includes potential amendments to the planning proposal.

The PPA must consider all submissions and the proponent's response, and report this in finalising its recommendations to the Department whether to finalise the planning proposal and amend the Local Environmental Plan.

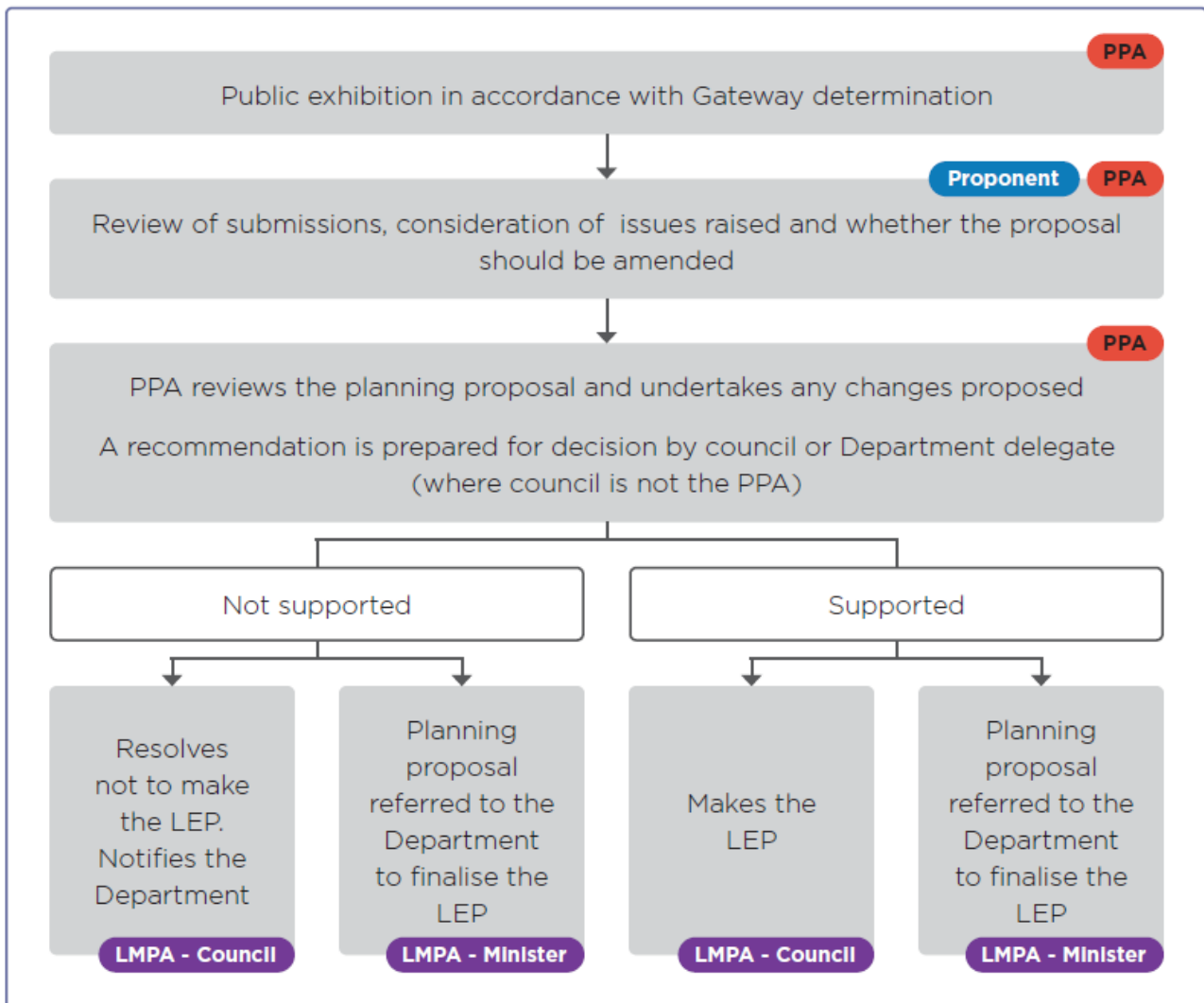


Figure 2 - Public exhibition and assessment stage

Finalisation

The PPA refers the planning proposal to the Department to finalise the Local Environmental Plan (LEP), who prepares the finalisation report, prepares the instructions for the Parliamentary Counsel's Office (PCO) to draft the LEP, finalise and then make the LEP, and issue the notification.

CONSULTATION

The planning proposal would be placed on public exhibition should it receive a Gateway determination to proceed.

TIMING

The letter at Attachment 3 provides Council with 42 days to accept the role as the relevant PPA for the planning proposal (until 2 February 2023).

LINK TO STRATEGY

As stated above, the proposal demonstrates many inconsistencies with the Greater Sydney Region Plan and North District Plan and Council's Local Strategic Planning Statement, Towards 2040 and Local Housing Strategy.

This report relates to the Community Strategic Plan Outcomes of:

- Protection of the Environment - Goal 1: Our bushland, coast and waterways are protected to ensure safe and sustainable use for present and future generations.
- Protection of the Environment - Goal 2: Our environment and community are resilient to natural hazards and climate change.
- Protection of the Environment - Goal 3: Our community is well-supported in protecting the environment.
- Environment Sustainability - Goal 5: Our built environment is developed in line with best practice sustainability principles.
- Places for People - Goal 7: Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community.
- Transport and Infrastructure - Goal 16: Our integrated transport networks meet the needs of our community.
- Transport and Infrastructure - Goal 17: Our community can safely and efficiently travel within and beyond Northern Beaches.
- Participation and Partnership - Goal 21: Our community is actively engaged in decision making processes.
- Participation and Partnership - Goal 22: Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community.

FINANCIAL CONSIDERATIONS

Potential future Council costs of the planning proposal, some of which will be offset by fees and charges, include:

- Contribution Plan preparation and approval
- Development and maintenance of off-site infrastructure to support the incoming community, including road upgrades, parks and community facilities
- Maintenance and management of any lands dedicated to Council as part of any future development.

SOCIAL CONSIDERATIONS

If the rezoning is progressed, there will be increased pressure on Council's social infrastructure by new residents as a result of this planning proposal. Council has received many submissions from the community opposing the planning proposal.

ENVIRONMENTAL CONSIDERATIONS

As outlined above, the planning proposal would result in incompatible and inappropriate land uses in areas exposed to high risk of bush fire. It proposes substantial vegetation clearing which will negatively impact threatened species habitat, Threatened Ecological Communities, watercourses, wetlands, and riparian areas.

GOVERNANCE AND RISK CONSIDERATIONS

There is significant reputational risk to Council associated with accepting the PPA role and being seen to progress a planning proposal that Council is already on the record as opposing.

