

9.2**Council Submission to the NSW Planning Assessment Commission – Oxford Falls Valley**

EXECUTIVE SUMMARY

Purpose

To bring before Council a submission to the NSW Planning Assessment Commission in relation to Oxford Falls Valley for Council's endorsement.

Summary

The Minister for Planning has requested the Planning and Assessment Commission to undertake a review of Oxford Falls Valley to determine whether any sites are capable of urban development. The Planning and Assessment Commission has invited Council to make a submission by 6 March 2009. Comprehensive investigations have been carried out by Council in recent years in response to representations by various proponents of development within the Oxford Falls Valley. This work remains valid and appropriate to form the basis of a submission to the Planning and Assessment Commission.

Financial Impact

Nil.

Policy Impact

The effects on policy cannot be determined until the outcome of the Planning Assessment Commission review is known.

RECOMMENDATION OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES

It is recommended that Council:

- A. Forward a submission to the PAC that is made up of this report and documents referenced here within being:
 - i) Ministerial Briefing Paper dated 15 March 2006 and all accompanying maps.
 - ii) Planning Report and all associated maps prepared at the request of the Minister for Planning and dated 22 May 2007.
- B. Re affirm its previous decision of 13 March 2007 and advise the PAC that further land release/ subdivision within the Oxford Falls Valley not be approved due to the constraints of the land, inconsistency with the Metropolitan Strategy and extreme bushfire hazard.
- C. Advise the PAC as follows:

Council is mindful of its responsibilities to address continued growth in the housing sector and to meet dwelling targets established by the Metropolitan Strategy and to this end Council is currently developing new housing strategy for Warringah. This body of work is incomplete and Council believes that any decision to identify land for urban release within the Oxford Falls Valley before completion of this work is pre-emptive of and potentially prejudicial to its outcomes.

REPORT

Advice from the NSW Planning and Assessment Commission

By letter dated 23 December 2008, the Director General of the Department of Planning advised Council that the Minister for Planning had decided to appoint the Planning and Assessment Commission (PAC) to conduct a review of the suitability of the Oxford Falls Valley for future development. The letter advised that the PAC would be in contact with Council shortly regarding this review.

The PAC contacted Council by letter dated 10 February 2009 and advised:

- the names of the Commissioners;
- that the Oxford Falls Retirement Village is to be excluded from the review area;
- that council is invited to make a submission to the PAC;
- that any submission should be made by 6 March 2009.

The letter includes a copy of the Minister's Direction, which includes the following description of the required review.

To establish if any sites in Oxford Falls Valley identified in the map tagged 'A' are capable of urban development and are of sufficient size to function as an urban release area, taking into consideration the sustainability criteria in the Metropolitan Strategy and relationship with existing urban development and current and potential servicing capacity and transport services.

The PAC's letter forms Attachment A.

Integral to its review, the PAC visited the subject area on 4 March 2009 and was accompanied by the Director of Planning and Development and members of his staff.

It is noted that the Director of Planning and Development has requested an extension of time in which for the making of Council's submission to allow staff to bring a report before Council on this matter.

Background to current land use planning strategy in Oxford Falls Valley

During the post war years and into the 1960s Warringah Shire experienced significant and rapid residential expansion. Components of this growth occurred within the catchment of Narrabeen Lagoon and resulted in concerns about impact on siltation and water quality of the lagoon and its tributaries.

On 8th March 1974 Interim Development Order No. 51 (IDO 51) was gazetted to control development in the catchment area of Narrabeen Lagoon to protect the lagoon, predominantly by restricting the range of land uses permissible and establishing a minimum area for subdivision of land of 20 ha, thereby limiting the intensity of land use. These provisions have been carried forward into successive planning instruments to date and remain current in Warringah Local Environmental Plan 2000 (WLEP 2000).

Subsequent to the gazettal of IDO 51, the Oxford Falls Valley, or portions thereof, has been periodically subject to investigation for release for urban purposes. During the late 1980s and 1990s this resulted in the release of a number of areas for urban development being in the vicinity of Cromer Road and Maybrook Avenue at Cromer; Wearden Road at Frenchs Forest and Red Hill.

It also resulted in Council's undertaking a Non Urban Lands Study (NULS) to guide existing and future uses in Warringah's non urban lands. The study area broadly included land within the suburbs of Terrey Hills, Duffys Forest, Belrose, Oxford Falls and Cromer. Stage 1 identified areas of land that may be capable of increased development intensity and based these findings about land capability largely on slope and terrain, soils and erosion hazard. It also identified areas that

have environmental constraints to development. Stage 2 investigated the impact of development of those lands identified as potentially supporting increased intensity in terms of the transport system serving the northern beaches and on the water quality of the receiving waters of the three catchments of Narrabeen Lagoon, Middle Harbour and Cowan Creek. Stage 2 was complete in 2001.

In 2001 Council sought to make an amendment to WLEP 2000 that would introduce an environmental protection overlay into the LEP. The overlay reflected the findings of the NULS. However, the Department of Planning (then Planning NSW) would not certify the amendment thereby preventing its public exhibition and progress into the LEP. The Department of Planning expressed concerns over the possible repercussions of the environmental protection layer upon future urban land releases.

In 1998, in response to the NSW Government requirements, Council produced its Residential Development Strategy (RDS). This was reviewed by Council in 2000 and the strategic direction for growth in the housing sector were incorporated into WLEP 2000. The RDS proposes a concentrated approach to growth rather than a dispersed one. The planning controls in WLEP 2000 are designed to encourage additional housing growth within and near to established urban centres and medium density areas. Dual occupancy development throughout suburban areas and the creation of additional suburban areas at urban fringes is not supported through the RDS.

Metropolitan Strategy and draft North East Subregional Strategy

The Sydney Metropolitan Strategy 'City of Cities' was released in December 2005 to set down the strategic directions and priorities for the future urban growth of Sydney. The emphasis of the strategy for growth is to continue to reinforce existing urban centres as the locations of future growth and to limit the extent to which release areas on the urban fringe are relied upon to accommodate additional population.

The draft North East Subregional Strategy was released for public exhibition in mid 2007. This strategy carries forward the directions of the Metropolitan Strategy at a regional level. It establishes both dwelling and jobs capacity targets for the subregion and separately for the 3 Local Government Areas that make up the subregion.

At Action C1.1.2 the subregional strategy states that there is no necessity for the development of non urban lands (other than those already identified on the Metropolitan Development Programme) to meet the dwelling targets for the North East Subregion to 2031. However, it also indicates that the Department of Planning will consider whether the existing land use planning controls in each subregion provide adequate excess capacity in all housing submarkets to meet subregional demands for the next 25 years.

In response to the strategic directions and dwelling targets established by the above referenced strategies Council is currently reviewing housing policy in Warringah. A Housing Issues Paper was brought before Council in June 2008 and, since that time, work is being carried out to investigate the suitability for growth within thirteen higher order centres as identified by the Metropolitan and North East Subregional Strategies. Staff of Strategic Planning are scheduled to brief Council in mid March in relation to the work undertaken to date and to seek endorsement for a public consultation programme that, amongst other matters, seeks input in relation to the centres based versus dispersed options for growth.

It is envisaged that this body of work will establish Council's (renewed) policy in relation to growth in the housing sector in Warringah. It may result in Council seeking to amend the LEP to carry forward any changes from the existing position into its planning provisions that guide and control future housing outcomes. The work is scheduled for completion by end of 2009.

In response to the NSW Government's planning reforms, Council is currently preparing a new comprehensive LEP for Warringah in line with the Standard Instrument (LEPs) Order. A draft LEP was adopted by Council on 13 November 2007 for submission to the Department of Planning for its certification. The draft LEP, as adopted by Council, proposes that the current B2 Oxford Falls Locality (under WLEP 2000) will be zoned E3 Environmental Management under the new standard

instrument LEP. The draft LEP has not yet been certified by the Department of Planning for public exhibition.

Recent history of investigations for urban development in the Oxford Falls Valley

Despite the strategic directions established by the Metropolitan North Eastern Subregional Strategies, the owners of certain lands within the Oxford Falls Valley have, in recent years, sought to achieve rezoning of their land to allow urban (residential) development. The five areas in respect of which representations have been made are known as Oxford Falls Retirement Village (southern end of Oxford Falls Road); Oxford Falls West (Wakehurst Parkway); Lizard Rock (Morgan Road); Cromer Golf Club (west of the golf course) and Red Hill (in the vicinity of Brooker Avenue).

To date Council has not supported these approaches. In 2004 it refused a development application for the Oxford Falls Retirement Village after an earlier application for the same site had been withdrawn by the proponent. Similarly, a development application made in early 2005 for over 430 dwellings at Lizard Rock was withdrawn by the proponent after advice by council staff that the proposal would require rezoning of the land.

It is understood that the development proponents for the 5 areas referenced above have separately approached the Minister for Planning, seeking approval to lodge development applications under the Part 3A Major infrastructure and other projects, provisions of the Environmental Planning and Assessment Act, 1979. As a consequence of these representations, in early 2006, the Minister for Planning visited the Oxford Falls Valley sites and, prior to this, called upon Council to provide a briefing paper in relation to the implications of rezoning the various sites.

Ministerial briefing paper mid 2006

The briefing paper, titled Consideration of rezoning non urban lands in Warringah, and dated 15 March 2006, was submitted to the Minister in March 2006. It addresses the strategic directions of the Metropolitan Strategy, environmental and servicing constraints in the Oxford Falls Valley and the 'Threshold Sustainability Criteria' which must be met before land can be added to the Metropolitan Development Programme. It provides a brief outline of the various proposals as they were known to Council at that time. The paper was accompanied by mapping of the Oxford Valley that identified vegetation communities, bush fire prone land, natural drainage, wetlands and riparian land.

Planning report – Oxford Falls Valley – Assessment of Rezoning / Development Proposals

The Minister's site visit was followed by a number of meetings in September and October 2006 between the Minister, the Director General and senior staff of the Department and of Council. This resulted in an agreed set of actions as follows:

1. Council to prepare an ownership map for the Oxford Falls Valley locality.
2. Council to prepare an environmental constraints map (excluding bushfire prone land mapping) for the Oxford Falls Valley locality.
3. Council to map the certified Bushfire Prone Land map (including buffer areas) for the Oxford Falls Valley locality.
4. The three maps listed above to be complete by the end of November 2006.
5. Council to review the submissions made by various applicants in relation to the sustainability criteria established through the Metropolitan Strategy in respect of:
Lizard Rock
Cromer Golf Club
Red Hill
Oxford Falls West
6. Council and the Department of Planning to work collaboratively on the Urban Villages component of Warringah's Residential Development Strategy.

On 13 March 2007 Council considered a report on the environmental constraints/ land capability mapping of the Oxford Falls Valley locality. At that meeting Council resolved:

1. *That the Environmental Constraint Land Map (and report) be provided to the Minister and Department of Planning.*
2. *That further land release/subdivision within the Oxford Falls Valley not be approved due to the constraints of the land, inconsistency with the Metropolitan Strategy and extreme bushfire hazard.*

On 22 May 2007 Council provided all of the documentation required by Actions 1 - 5 in a document titled, Planning Report – Oxford Falls Valley - Assessment of Rezoning / Development Proposals which included as attachments all of the required maps. Action 6 continues to be addressed through the work that Strategic Planning is currently undertaking in relation to Housing Strategy in Warringah.

The planning report prepared by Council staff did not constitute a formal assessment process undertaken by Council under the Environmental Planning and Assessment Act and was not an endorsed position of Council. Rather, it was information requested by the Minister to assist him in his considerations of the land owners' representations. However, on 26 August 2008 an Administrator's Minute was brought forward to the Council Meeting, reaffirming the Council's resolution of 13 March 2007 and making the planning report for each of the 4 sites available for public viewing.

Oxford Falls Regional Crown Reserve

Between December 2003 and February 2004, the Department of Lands exhibited a draft document titled Assessment of Crown Land at Belrose, Cromer and Oxford Falls. The document supported the majority of the Crown Land in Oxford Falls Valley being identified for environmental protection. The assessment was finalised in early 2005 and varied significantly from the exhibited position. It included two categories for future management being 'environment/ community' and 'investigate disposal'.

The final document resulted in significant Council and community concern in relation to the future management of Crown Land in Oxford Falls Valley. Consequently, a working party was established involving officers from the Department of Lands and from Council. Discussions with various stakeholders resulted in the creation of the Oxford Falls Valley Regional Crown Reserve (RCR) which was created by notice in the Government Gazette of 25 August 2006. The RCR covers all Crown Land in the Oxford Falls Valley (some 510 hectares).

A management strategy for the RCR has been prepared by the Department of Lands (August 2006) which should lead to the preparation of a Plan of Management for all lands in the reserve. However, to date, this is not complete and it is noted that, under the management strategy, there are three categories of preferred land use being 'environmental protection', 'community' and 'further investigation'. Approximately 30% of the allotments are categorised as 'further investigation'. Recent enquiries with the Department of Lands indicate that a consultant has been appointed to prepare the Plan of Management and that the preparation of this plan will be the process for determination of the future for allotments classified as 'further investigation'.

Clearly the Plan of Management and, in particular, the outcomes for land categorised as 'further investigation' and the relative location of these sites to environmentally sensitive land, will be of relevance in consideration of suitability of land in Oxford Falls Valley for urban development.

Conclusion

The Ministerial briefing paper dated 15 March 2006 and accompanying mapping remain valid. Similarly the environmental constraints mapping for Oxford Falls Valley and the Planning Report making assessment of the applications made under Part 3A of the Environmental Planning and Assessment Act at Lizard Rock, Cromer Golf Club, Red Hill and Oxford Falls West remain valid and comprehensively address issues of significance to the PACs terms of reference.

Due to the limited time frame afforded to carry out further investigations and the comprehensive nature of the work undertaken by Council to date, it is recommended that these documents form the basis of Council's submission to the PAC.

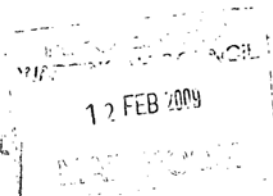
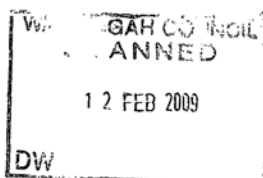
Manager Strategic Planning





NSW PLANNING ASSESSMENT COMMISSION

Mr Rick Hart
General Manager
Warringah Council
Civic Centre
725 Pittwater Road
DEE WHY NSW 2099



10 February 2009

Dear Mr Hart

**Call for Submissions
Oxford Falls Valley**

The Honourable Kristina Keneally (MP), Minister for Planning, pursuant to section 23D(1)(b)(ii) and Schedule 3 of the *NSW Environmental Planning and Assessment Act 1979* and Part 16(B) of the *Environmental Planning and Assessment Regulation 2000*, has directed the Planning Assessment Commission to undertake a review of the development potential of Oxford Falls Valley in the Warringah Local Government Area.

The Commission comprises:

1. Ms Janet Thomson (Chair);
2. Ms Donna Campbell; and
3. Mr John Court

The Terms of Reference (ToR) for the Commission are attached. Please note that the Minister has requested that the Oxford Falls Retirement Village be excluded from the review area as it is already the subject of a Part 3A application to the Department. The Locations Map attached provides clarification on the sites to be included in the Commission's review.

One of the ToR is that the Commission invites submissions from Warringah Council. If you wish to make a submission to the Commission please send it to Carmel O'Connor, Coordinator, Planning Assessment Commission at GPO Box 3415 Sydney NSW 2001 or via email to carmel.o'connor@planning.nsw.gov.au before **4:00pm Friday March 6, 2009**.

Following its review, the Commission is to prepare a report to the Minister.

If you have any questions relating to the Commission process, I can be contacted on 93832102.

Yours sincerely,

Carmel O'Connor
Coordinator
NSW Planning Assessment Commission

COMMISSION SECRETARIAT
Level 13, 301 George Street SYDNEY, NSW 2000
GPO BOX 3415, SYDNEY, NSW 2001
TELEPHONE (02) 9383 2100 FAX (02) 9299 9835
pac@pac.nsw.gov.au

Direction to the Planning Assessment Commission

Oxford Falls Valley Review

Section 23D(1)(b)(i) and Schedule 3 of the *Environmental Planning and Assessment Act 1979* and Part 16B of the *Environmental Planning and Assessment Regulation 2000*

I, the Minister for Planning, request and direct the Planning Assessment Commission (PAC):

1. To review and provide advice on the future development potential of Oxford Falls Valley as set out in Schedule 1 to this Direction;
2. To constitute a panel of 3 members for the purposes of carrying out the Review, with expertise in the fields specified in Schedule 2 to this Direction;
3. To invite submissions from relevant landowners and Warringah Council, and invite other submissions as appropriate; and
4. To provide its final report in relation to the Review to me by 30 April 2009.



The Hon Kristina Keneally MP
Minister for Planning

Sydney *10 Dec* 2008

SCHEDULE 1

1. To establish if any sites in Oxford Falls Valley identified in the map tagged 'A' are capable of urban development and are of sufficient size to function as an urban release area, taking into consideration the sustainability criteria in the Metropolitan Strategy and relationship with existing urban development and current and potential servicing capacity and transport services;

SCHEDULE 2

1. Experience in flora/fauna impacts, bushfire assessment, riparian corridors and development on sensitive sites;
2. Broad experience in natural and aboriginal significance; and
3. Experience in land supply, economics and demographics.

