



22 January 2019

Request to rezone land at the western end of Ralston Avenue, Belrose (PP_2015_WARRI_001_00)

1. INTRODUCTION

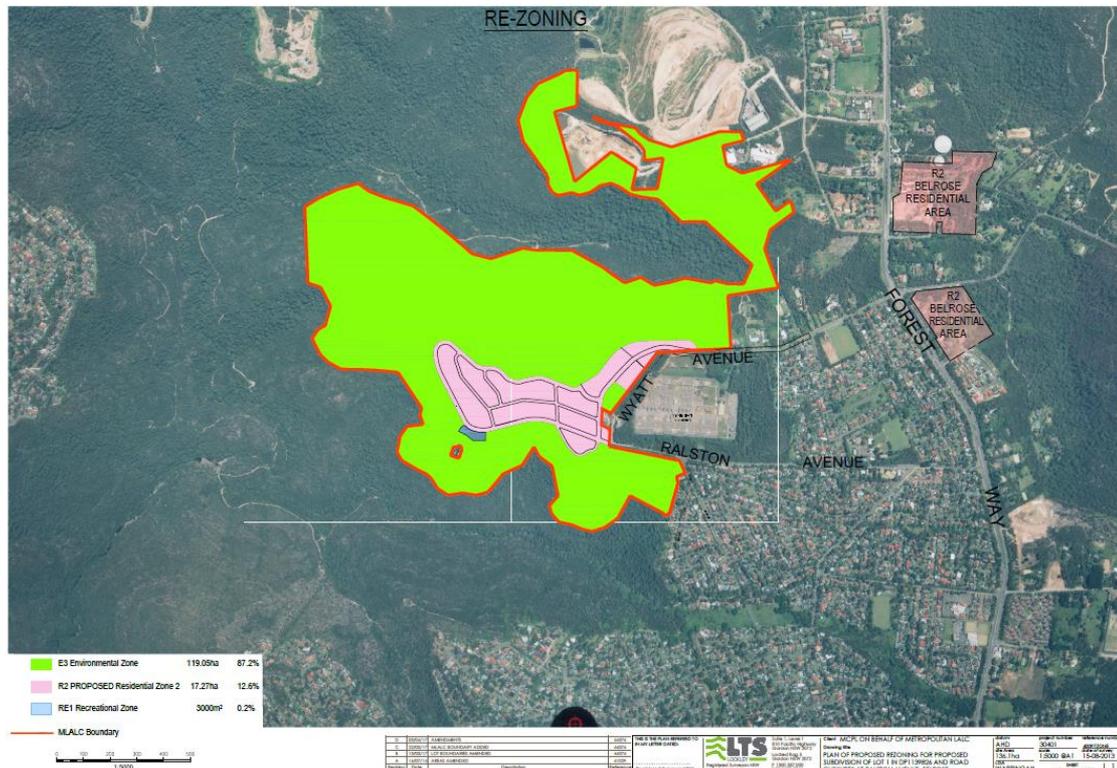
1. On 11 January 2018, the then Planning Assessment Commission, now the Independent Planning Commission (the **Commission**) received a request for advice from the Department of Planning and Environment (the **Department**), dated 21 December 2017. The request was in relation to the Metropolitan Local Aboriginal Land Council's (MLALC) (the **Proponent**) proposal to amend the *Warringah Local Environment Plan 2011 (WLEP 2011)* to rezone land at the western end of Ralston Avenue, Belrose, NSW to R2 Low Density Residential, RE1 Public Recreation and E3 Environmental Management.
2. The Commission has been requested by the delegate of the Minister of Planning, in accordance with section 54 (2)(C) (now section 3.32(2)(c)) of the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**), to review the planning proposal and provide a recommendation as to whether the proposed instrument should be made. The delegate of the Minister of Planning asked that the Commission "...consider seeking independent expert advice on bushfire risk having regard to the way in which advice from the RFS developed in the course of the proposal."
3. Ms Lynelle Briggs AO, Chair of the then Planning Assessment Commission, nominated Ms Abigail Goldberg (Chair), Mr Stephen O'Connor and Ms Annelise Tuor to constitute the Commission to provide advice on the planning proposal.
4. On 4 June 2018, following the completion of Ms Abigail Goldberg's term at the Independent Planning Commission, Professor Mary O'Kane, Chair of the Commission, nominated Ms Annelise Tuor (Chair) and Mr Stephen O'Connor to provide advice on the planning proposal.
5. On 21 December 2018 the Department wrote to the Commission and confirmed that the request for advice was being made under section 23D(1)(b)(i) (now section 2.9) of the EP&A Act, not section 54 (2)(C) (now section 3.32(2)(c)) as referenced in the request for advice from the Department, dated 21 December 2017.

1.1 Locality and the subject land

6. The Proponent's site is located at the western end of Ralston Avenue, Belrose, NSW and is known as Lot 1 DP1139826 (the **subject land**) (see Figure 1). It is an undeveloped, irregularly shaped allotment of land, which is 136.62 hectares (**ha**) in size and primarily covered in native vegetation. It accommodates a number of informal vehicle, bike and horse tracks. The subject land is located on a plateau at the crest of a ridge, with perimeters to the north, west and south comprised of gentle to steep sloping sandstone escarpments.
7. The subject land is adjacent to the Garigal National Park and is located west of existing residential development in Ralston Avenue and the Sydney East Substation (the **Substation**).
8. The subject land and surrounding area are designated as being Bushfire Prone on Council's Bushfire Prone Land Map.
9. The subject land is located within the C8 Belrose North Locality under the *Warringah Local Environmental Plan 2000 (WLEP 2000)*. The WLEP 2000 sets the maximum housing density for the subject land at 1 dwelling per 20 ha of site area and establishes that the desired future character of the locality is:

“The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.”

Figure 1: Proposed amendment to the WLEP 2011 Land Zoning Map Sheet LZN_003
 Source: Northern Beaches Council Report to Ordinary Council Meeting Item No. 10.4 – 19 December 2017



10. The subject land is part of the wider C8 Belrose North and B2 Oxford Falls Valley localities that were deferred from WLEP 2011 and are part of the Oxford Falls Belrose North Strategic Review (**the Strategic Review**) and subsequent planning proposal (Oxford Falls Valley and Belrose North Planning Proposal) which included land in the deferred areas to be zoned E4 – Environmental Living.
11. A Gateway Determination for the Oxford Falls Valley and Belrose North Planning Proposal was issued on 1 November 2017, which included conditions that required further examination of this zoning and a detailed review of the future urban development potential of four sites in the deferred area, which did not include the subject land. Council resolved on 27 March 2018 not to proceed with the Oxford Falls Valley and Belrose North Planning Proposal.

1.2 Summary of Planning Proposal and Gateway Determination

12. On the 23 July 2014, the Sydney East Joint Regional Planning Panel determined that a proposal to rezone the subject land should proceed to a Gateway determination, subject to conditions.
13. On 28 January 2015, the Minister’s delegate issued a Gateway determination allowing the proposal to proceed to public exhibition and consultation with agencies. The conditions contained in the Gateway determination required that:
 1. “Prior to undertaking public exhibition, the planning proposal is to be updated to:
 - (a) remove all references to the E2 Environmental Conservation Zone, to be replaced with E3 Environmental Management Zone;
 - (b) demonstrate consistency with “A Plan for Growing Sydney”, released on 14 December 2014;

- (c) *rezone the R2 Low Density Residential, RE 1 Public Recreation and E3 Environmental Management on the Land Use Zoning Map;*
- (d) *apply a minimum lot size of 600sqm to land zoned R2 Low Density Residential on the Lot Size Map; and*
- (e) *apply a building height of 8.5 m to land zoned R2 Low Density Residential on the Height of Building Map.*

Note: Maps should be prepared to the standards identified in the Standard Technical Requirements for LEP Maps (Department of Planning and Infrastructure 2013).

2. *Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:*
 - (a) *the planning proposal must be made publicly available for a minimum of 28 days; and*
 - (b) *the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of a Guide to Preparing LEPs (Department of Planning and Environment 2013).*
 3. *Consultation with the NSW Rural Fire Service consistent with s117 Direction 4.4 Planning for Bushfire Protection is required prior to undertaking community consultation under section 57 of the EP&A Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. This agency advice received and the proponents (sic) proposed response to this advice should be placed on public exhibition with the planning proposal.*
 4. *Consultation is required with the following Government agencies prior to exhibition:*
 - (a) *Office of Environment and Heritage; and*
 - (b) *Transport for NSW – Roads and Maritime Services.*
 5. *A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).*
 6. *The timeframe for completing the Local Environment Plan is to be 12 months from the week following the date of the Gateway determination.”*
14. The Proponent updated the proposal in response to the Gateway Determination, feedback from public authorities and to address the Department’s guidelines *Planning Proposals: A guide to preparing planning proposals* dated August 2016 (**the Guide**). These changes are set out in the Proponent’s *Supplementary Planning Report and Updated Planning Proposal Ralston Avenue, Belrose*, dated 23 February 2017 (the **Supplementary Report**).
 15. Section 5 of the Supplementary Report includes an updated planning proposal (the **Planning Proposal**). It proposes to amend the WLEP 2011 Land Zoning Map Sheet LZN_003 to rezone part of the subject land to:
 - R2 Low Density Residential (approximately 17.27 ha) to allow for low density residential dwellings;
 - RE1 Public Recreation (approximately 0.3 ha), to facilitate the construction and dedication of public open space to Council; and
 - E3 Environmental Management (119.05 ha), for environmental purposes for the retention of natural bushland and asset protection zones (**APZ**).
 16. The Planning Proposal also proposes amendment to WLEP 2011 Height of Building Map Sheet HOB_003 to provide a maximum permissible height of 8.5 metres for the subject land within zones R2 Low Density Residential and RE1 Public Recreation.
 17. The Planning Proposal does not include any amendments to the Lot Size Map in WLEP2011, as required by the Gateway determination. The Planning Proposal is supported by an indicative subdivision plan which shows 156 residential lots within the areas proposed to be zoned R2 Low Density Residential with a minimum lot size of 600m². Figure 2 illustrates the indicative subdivision

plan proposed.

18. The Planning Proposal and a draft Voluntary Planning Agreement (VPA) were publicly exhibited by Council from 27 May 2017 - 25 June 2017. A total of 243 submissions were received from the community with 84% objecting to the Planning Proposal and 2% supporting the Planning Proposal, with a further 4% expressing conditional support. The remaining 10% did not object or support or were unrelated. Further submissions from public authorities were also received, including from the NSW Rural Fire Service (NSW RFS).

Figure 2: Indicative subdivision plan

Source: Northern Beaches Council Report to Ordinary Council Meeting Item No. 10.4 – 19 December 2017



19. Following the exhibition and in response to the submissions the Proponent provided further information, including the Travers Bushfire and Ecology *Ralston Avenue Belrose Planning Proposal - Response by RFS*, dated 25 October 2017.
20. Council's *Resolution 10.4 Planning Proposal Ralston Avenue and Draft Voluntary Planning Agreement*, dated 19 December 2017 (the **Council Assessment Report**) recommended that the Department not make a Local Environment Plan to enable the development. The Council Assessment Report concluded:
- *"on balance, the Planning Proposal did not have strategic merit as it is inconsistent with aims to protect the environment and increase resilience to natural hazards as identified in A Plan for Growing Sydney, and the Greater Sydney Commission's Revised draft North District Plan and Draft Greater Sydney Plan (October 2017). The provision of additional housing was not considered to have merit as the proposal was not identified through a strategic process and the site is not feasible for residential development."*
 - *"the Proposal had no site-specific merit due to impacts on biodiversity and threatened species, the adjoining National Park, bushfire risk, the proximity of the Sydney East Substation and financial arrangements for infrastructure provision. There remain unresolved issues with respect to stormwater and social infrastructure."*
 - *"Both the RFS and Council's Bushfire Consultant conclude the proposal is inconsistent with S117 Direction 4.4 Planning for Bushfire Protecting, as it would place inappropriate development (i.e. housing) in a hazardous area. Council cannot support the proposal in light of the serious risks to life and property."*

- “The Proposal was found to be inconsistent with State Environmental Planning Policies (SEPPS) No 19 – Bushland in Urban Areas and SEPP (Infrastructure) 2007, relevant Ministerial Directions and local provisions, policies and plans.”

21. On 21 December 2017, the Department wrote to the Commission seeking advice on whether the Planning Proposal should proceed. The Department’s request for advice noted the Proponent had raised concerns regarding Council’s processes and requested the appointment of an alternative Relevant Planning Authority. The Department’s request for advice asked that the Commission to consider seeking independent advice on bushfire risk.

1.3 Project Background

22. A summary of the significant milestones for the Planning Proposal has been compiled in Table 1.

Year	Month	Milestone	
2013	April	<i>Initial Planning Proposal</i> prepared and submitted to Council, including a concept plan and supporting studies.	
2014	May	Department’s Pre-Gateway Review report on planning proposal to the Joint Regional Planning Panel.	
	June	Joint Regional Planning Panel recommendation to proceed with planning proposal.	
	November - December	Council resolution to proceed to Gateway Determination.	
	December	<i>A Plan for Growing Sydney</i> released by the Department of Planning and Environment.	
2015	January	Minister’s delegate issues a Gateway Determination for the planning proposal.	
	February - March	Agency comments - NSW RFS, Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS).	
	May	Proponent response to public authorities.	
	June -July	Agency comments – Letters from NSW RFS in response to Proponent’s response.	
	August	Proponent response to NSW RFS.	
2016	February	Agency comments – OEH submission regarding Biodiversity Certification.	
	March	Agency comments – Transport for NSW.	
	March	Proponent response to Transport for NSW.	
	April	Blackash Bushfire Consulting <i>Peer Review of Ralston Avenue Planning Proposal - Bushfire Planning</i> , dated 28 April 2016 (the Blackash Report 2016) on behalf of Council	
	September	Agency comments received – NSW RFS.	
	December	Proponent’s <i>Response to Blackash Report 2016</i>	
2017	April	The Supplementary Report submitted to Council. It included: Bushfire Protection Assessment, Fuel Management Plan, Ecological Assessment, Indicative Subdivision Plan, Zoning Mapping and Height of Building Mapping.	
	June - October	Agency comments – Transport for NSW, OEH, Sydney Water, Ausgrid, TransGrid, RMS and NSW RFS.	
	September- November	Proponent prepares response to public submissions and public authorities including revised Transport, Traffic and Assessment Report, Noise Impact Assessment of TransGrid Substation, Response to NSW RFS’s referral prepared by EcoLogical Australia’s <i>Ralston Avenue Belrose Planning Proposal: Review</i> , dated 16 August 2017 (the EcoLogical Report) and Aboriginal Archaeological and Cultural Heritage Assessment.	
	September	Blackash Bushfire Consulting <i>Ralston Avenue, Belrose – Planning for Bushfire Protection</i> , dated 20 September 2017 (the Blackash Review 2017) on behalf of Council.	
	October	<i>Draft Greater Sydney Region Plan</i> and <i>Draft North District Plan</i> released by the Greater Sydney Commission.	
	December		Council resolution to reject the Planning Proposal and recommend that the Department of Planning and Environment does not make a Local Environment Plan.
			The Department refers the Planning Proposal to the Commission for advice.

2. THE COMMISSION'S MEETINGS

23. In preparing this advice, the Commission met with the Department, the Proponent, Council, the NSW RFS, TransGrid NSW and OEH and conducted a site inspection. Minutes of these meetings were made available on the Commission's website.

2.1 Meeting with the Department

24. On 23 March 2018 the Commission met with the Department. The following matters were raised in relation to the Planning Proposal:

- the background to the Planning Proposal;
- the Department's decision to request advice from the Commission; and
- the Department's decision to not prepare a project background and assessment for the Commission.

2.2 Meeting with the Proponent and site visit

25. On 19 February 2018 the Commission met with the Proponent. The following matters were raised in relation to the Planning Proposal:

- outline of the Planning Proposal and its history, the Proponent's involvement with the subject land and the former Sydney East Joint Regional Planning Panel determination;
- the consistency of the Planning Proposal with the *Plan for Growing Sydney*, District Plan, the Premier's priorities, relevant State Environmental Planning Policies (**SEPPs**) and s 9.1 Ministerial Directions (formally s117);
- potential bushfire and biodiversity impacts associated with the Planning Proposal, including the proposed mitigation and management strategies to address these impacts. In particular, the Proponent's position that the Planning Proposal complies with relevant bushfire policies and s 9.1 Ministerial Directions; and that the Planning Proposal would reduce the fire risk to adjoining residential development and the Substation; and
- The Council and the NSW RFS were originally supportive but have changed their position to being opposed to the Planning Proposal.

The Commission also visited the site accompanied by the Proponent and observed the topography and vegetation of the subject land, the existing development in the vicinity of the subject land, the identified layout and the TransGrid Substation.

2.3 Meeting with Northern Beaches Council

26. On 19 February 2018 the Commission met with Council. The following matters were raised in relation to the Planning Proposal:

- the Planning Proposal, including current zoning, proposed zoning, the VPA, bushfire risk, strategic merit assessment, site specific merit assessment and ecological impacts;
- Council's view that the Planning Proposal does not exhibit strategic merit as it is considered to be an inappropriate location for housing, of ad hoc nature and not consistent with State and local bushfire policies;
- the evolution of the impact assessment since the Gateway determination, including bushfire risks and biodiversity impacts; and
- the suitability of the proposed E3 zone as an offset area and the range of uses permissible in the proposed R2 zone.

2.4 Meeting with NSW Rural Fire Service

27. On 19 February 2018 the Commission met with the NSW RFS. The following matters were raised in relation to the Planning Proposal:

- the responsibilities of the NSW RFS in relation to bushfire risk and in considering planning proposals;

- acknowledgment that the proponent may be meeting a number of provisions within *Planning for Bushfire Protection 2006*, however it is not meeting the macro level requirements in *Section 9.1 Direction 4.4 Planning for Bushfire Protection*. NSW RFS has not looked in detail into the specific mitigation measures proposed as the provision of housing on the site is not supported strategically;
- potential bushfire behaviour and logistical considerations in the event of a bushfire, in particular, a fire would take approximately an hour to move up the valley from Mona Vale Road to the subject land and this may give rise to the need for residents to stay in place;
- the proximity of wires over Wyatt Avenue could create conditions susceptible to arcing during bushfire events. This could require the need to depower the sub-station (which could have far reaching impacts) to evacuate residents;
- obligation of land owners to reduce fire risk and NSW RFS can require owners to undertake fire reduction works to limit risk to adjoining properties; and
- fire frequency and risk factors associated with the Planning Proposal.

2.5 Meeting with NSW Office of Environment and Heritage

28. On 5 March 2018 the Commission met with OEH. The following matters were raised in relation to the Planning Proposal:
- potential direct impacts to site which demonstrates high biodiversity value;
 - potential indirect impacts into the adjacent National Park and the proposed E3 zoned land within the site from issues such as fire management and stormwater drainage;
 - the Planning Proposal is not consistent with the goals of the *Plan for Growing Sydney* to avoid ad hoc development;
 - if a fire eventuated in a National Park, which led to a loss of property or life related to the proposed Planning Proposal, OEH could be held responsible;
 - lack of OEH support for rezoning a portion of the land as E3, rather than E2; and
 - land clearing for APZs will increase sedimentation and is inappropriate within area designated for biodiversity offsetting and conservation.

2.6 Meeting with TransGrid NSW

29. On 5 March 2018 the Commission met with TransGrid NSW. The following matters were raised in relation to the Planning Proposal:
- the registered access easement and implications of providing roads under power lines, including potential to shut down the network;
 - TransGrid's bushfire response, including preferred evacuation routes towards Rawson Avenue to avoid the need to turn off the substation. Shutting down the substation can take up to four hours;
 - fire reduction work undertaken by TransGrid to reduce risk to its assets. Not aware if works are undertaken to limit risk to adjoining residential properties; and
 - potential noise impacts on future residents from the nearby substation.

3. INDEPENDENT REPORT ON BUSHFIRE RISK

30. The Department's referral of the Planning Proposal included a request that the Commission consider seeking "*independent expert advice on the bushfire risk having regard to the way in which advice from the RFS developed in the course of the proposal.*"
31. The Commission engaged Kleinfelder Australia Pty Ltd (**Kleinfelder**) to undertake an independent review of the bushfire risk on the subject land in relation to the Planning Proposal. Kleinfelder provided the Commission with the *Bushfire Assessment Independent Review Planning Proposal Ralston Avenue, Belrose* (the **Kleinfelder review**) on 23 April 2018. The Kleinfelder review was made available on the Commission's website and provided to the Proponent, Council, and the Department on 27 April 2018.

32. On 2 May 2018, after reviewing the Kleinfelder review, Council wrote to the Commission and stated:
- “Council and its independent Bush Fire Consultant, Blackash, strongly support the Report’s findings. The Report is consistent with Council’s assessment of the Proposal.”*
33. On 25 May 2018, after reviewing the Kleinfelder review, the Proponent wrote to the Commission and stated:
- “The recommendations of the independent review are based upon an incomplete and inadequate review of the available information and is largely subjective with little supporting evidence for opinions”*
34. The Proponent’s response also stated that there was a perceived or actual conflict of interest for Kleinfelder to undertake an independent review of the bushfire risks. The response contained legal advice from Dentons Australia Pty Ltd, dated 24 May 2018, detailing their views on this perceived or actual conflict of interest.
35. Having regard to the Proponent’s views in relation to the perceived or actual conflict of interest, the Commission decided to set aside the Kleinfelder review, without prejudice, and secure another independent review of the risk of bushfire on the subject land having regard to the Planning Proposal.
36. On 9 September 2018, after consulting with the Proponent and Council, the Commission engaged Australian Bushfire Assessment Consultants Pty Ltd (**ABAC**) to undertake a review of the bushfire risk associated with the Planning Proposal. The scope of works for the review was made available on the Commission’s website.
37. On 15 October 2018, ABAC provided the Commission with *Review of Assessment Documentation for the Planning Proposal: Ralston Avenue, Belrose*, dated 12 October 2018 (the **ABAC Independent review**). The ABAC Independent review was published on the Commission’s website.
38. On 15 October 2018, the ABAC Independent review was provided to the Proponent, Council, the NSW RFS and the Department for consideration and a request was made that any comments be provided to the Commission by 29 October 2018.
39. On 25 October 2018 the Proponent requested additional time, until 5 November 2018, to review and provide comment on the ABAC Independent review. The Commission agreed to this additional time and informed the NSW RFS and Council that any comments on the Independent review should be provided by 5 November 2018.
40. On 25 October 2018 the NSW RFS provided a submission on the ABAC Independent review, which stated:
- was *“in general agreement with the conclusion reached by the NSW RFS in not supporting the Planning Proposal”*;
 - *“raises a further valid point that the Biodiversity Conservation Act 2016 is now in play, and the ability to clear the land to create the required asset protection zone may now be restricted”*; and
 - *“concentrates on the rezoning of the land to allow for residential development, it is stressed that proposed residential zoning permits other land uses other than just single dwelling houses. Such a rezoning would inevitably invite subsequent development applications for more vulnerable land uses and an increased density.”*
- This comment was made available on the Commission’s website.
41. On 25 October 2018 Council provided a submission on the ABAC Independent review, which stated:

- *“This is the second Independent Review that has been commissioned by the Independent Planning Commission. Both reviews found unresolved bushfire issues and significant areas of risk associated with the proposal.”; and*
- *“The Independent Review demonstrates a good appreciation for the proposal and issues. It has provided an independent and objective review to assist the Independent Planning Commission reach a determination on the application.”*

This comment was made available on the Commission’s website.

42. On 5 November 2018 the Proponent provided a response to the ABAC Independent review, which stated (in text justification removed):

- *“The ABAC Report provides that it is presently unable to support the Proposal. The proponents disagree. In taking that position, their submissions are threefold.*
 - (a) First, the ABAC Report mostly, correctly identifies the relevant legal tests required to formulate conclusions regarding the Proposal. In particular, the ABAC acknowledges that the Proposal will be appropriate in circumstances where there is mitigation of bushfire risk to an acceptable level. It does not however, properly apply that methodology to the information that it had to hand.*
 - (b) Second, and notwithstanding the above, the Brief provided for the purposes of the ABAC Report was inadequate. The Brief did not include critical information and documents that should have been taken into account in the ABAC’s assessment.*
 - (c) Third, and following the above, the application of the correct methodology to the appropriate documents and information necessarily leads to the conclusion that all potential bushfire risks have been mitigated or lessened to an acceptable level to permit the Proposal.*
 - (d) Importantly, the ABAC’s conclusion is not definitive. It provides that the Proposal cannot be supported unless and until all potential risks are mitigated to an acceptable level.*
 - (e) Accordingly, the respective positions of the ABAC and the proponents are not mutually exclusive. Rather, the proponents take the view that if and when the ABAC is properly apprised of relevant critical information, it must be supportive of the Proposal.”; and*
- *“On the assumption that the appropriate methodology is applied to all relevant information, the conclusions must accord with the support of the Proposal.”*

This comment was made available on the Commission’s website.

43. On 15 November 2018, the documents identified by the Proponent as addressing the concerns raised in the Independent review were provided to ABAC for consideration.

44. On 18 December 2018, ABAC wrote to the Commission and provided the *Review of Additional Documentation for Planning Proposal: Ralston Avenue, Belrose*, dated 6 December 2018 (the **ABAC Addendum Independent review**). The ABAC Addendum Independent Review was made available on the Commission’s website.

45. The ABAC Addendum Independent review concluded that:

- *“In summary, the review of the additional documentation has not materially altered the position stated in our correspondence to the Commission dated 12 October 2012.”; and*
- *“Despite the technical information provided on behalf of the proponent, we are unable to draw a clear conclusion that the possible risks posed by surrounding bushfire prone land to the area of land proposed to be rezoned will not be proportionately greater than the likely ability of the range of bushfire protection measures to mitigate such risks.”*

4. THE COMMISSION’S CONSIDERATION

46. In reviewing the Planning Proposal and its merits, the Commission has carefully considered the following material (the **Material**):

- the Planning Proposal;
- the *Warringah Local Environmental Plan 2000*;
- the *Warringah Local Environmental Plan 2011*;
- the Supplementary report, including all attachments including:
 - The Extension of Gateway determination, dated 22 December 2015;
 - Travers Bushfire and Ecology *Bushfire Protection Assessment – Rezoning Application Lot 1 DP 1139826 Ralston Avenue Belrose*, dated April 2017 (the **TBE Report 2017**);
 - Travers Bushfire and Ecology *Fuel Management Plan*, dated April 2017 (the **Fuel Management Plan**);
 - Travers Bushfire and Ecology *Ecological Assessment Planning Proposal for Lot 1 DP 1139826 Ralston Avenue, Belrose*, dated April 2017 (the **Ecological Assessment**);
 - *Indicative Subdivision Plan*, dated 28 April 2017; and
 - *Zoning Maps - Total Site, Areas, Aerials, and Building Height*, dated 28 April 2017.
- Department’s referral letter to the Planning Assessment Commission, dated 21 December 2017, as amended by the Department on 21 December 2018;
- Department’s letter to Council, dated 21 December 2017;
- NSW Rural Fire Service submissions, dated 23 February 2015, 27 September 2016 and 18 October 2017;
- Blackash Bushfire Consulting *Peer Review of Ralston Avenue Planning Proposal - Bushfire Planning*, dated 28 April 2016 (the **Blackash Report 2016**);
- EcoLogical Australia’s *Ralston Avenue Belrose Planning Proposal: Review*, dated 16 August 2017 (the **EcoLogical Peer Review**);
- Blackash Bushfire Consulting *Ralston Avenue, Belrose – Planning for Bushfire Protection*, dated 20 September 2017 (the **Blackash Review 2017**);
- the Department’s Gateway determination, dated 28 January 2015, including all attachments (the **Gateway report**);
- *Section 9.1 (formerly section 117) Direction 4.4 Planning for Bushfire Protection* (the **Direction**);
- *Section 9.1 (formerly section 117) Direction 2.1 Environment Protection Zones*;
- *Planning for bush fire protection 2006*;
- *Our Greater Sydney 2056 North District Plan – connecting communities*
- *SEPP 19 Bushland in Urban Areas*;
- *SEPP No 44 - Koala Habitat Protection*;
- *SEPP 55 Remediation of Land*;
- *SEPP (Infrastructure) 2007*;
- *SEPP (Buildings Sustainability Index: BASIX) 2004*;
- information discussed with the Commission at its meeting with the Department on 23 March 2018 and provided in the minutes published on the Commission’s website;
- information discussed with the Commission at its meeting with the Proponent on 19 February 2018 and provided in the minutes published on the Commission’s website;
- information discussed with the Commission at its meeting with Council on 19 February 2018 and provided in the minutes published on the Commission’s website, including supplementary information provided on 23 February 2018;
- information discussed with the Commission at its meeting with the NSW Rural Fire Service on 19 February 2018 and provided in the minutes published on the Commission’s website, including supplementary information provided on 28 February 2018;
- information discussed with the Commission at its meeting with NSW Office of Environment and Heritage on 5 March 2018 and provided in the minutes published on the Commission’s website, including supplementary information provided on 6 March 2018;
- information discussed with the Commission at its meeting with TransGrid on 5 March 2018 and provided in the minutes published on the Commission’s website, including supplementary information provided on 8 March 2018;

- Urbis' letter on behalf of the Proponent to the Commission *Planning Proposal for Ralston Avenue Belrose Metropolitan Local Aboriginal Land Council*, dated 8 March 2018;
- Urbis' letter on behalf of the Proponent to the Commission dated 25 May 2018, including supplementary reports from Ecological Australia Pty Ltd, dated 21 May 2018, and from Dentons Australia Pty Ltd, dated 24 May 2018;
- The ABAC Independent Bushfire review, dated 12 October 2018, including all attachments;
- The ABAC Addendum Independent review, dated 6 December 2018;
- Council's response to the Independent Bushfire review, dated 25 October 2018;
- Proponent's response to the Independent Bushfire review, dated 5 November 2018;
- The NSW RFS response to the Independent Bushfire review, dated 25 October 2018;
- Information accessed through the Northern Beaches Document Library for the Planning Proposal at yoursay.northernbeaches.nsw.gov.au/Ralston-planning-proposal/documents, last accessed 23 October 2018, including:
 - Planning Proposal Ralston Avenue, Belrose, dated April 2013, including all attachments;
 - NSW RFS Referral Response and submissions, dated 20 February 2015, 26 June 2015, 9 July 2015, 23 September 2016
 - OEH Referral Response and submissions, dated 27 February 2015, 30 June 2015, 9 February 2016 and 26 June 2017
 - Roads and Maritime Services Referral Response and submissions, dated 10 March 2015 and 18 July 2017
 - Proponent's Public Authority Response, Ralston Avenue Planning Proposal, dated 18 May 2015;
 - Proponent's Responses to the NSW RFS, prepared by Travers Bushfire and Ecology, dated 11 August 2015, 4 November 2016, 9 December 2016 and 25 October 2017;
 - Transport for NSW submission, dated 3 March 2016, 20 June 2017;
 - Proponent's Response to Transport for NSW referral comments, dated 9 March 2016
 - Proponent's Response to Blackash review 2016, dated 9 December 2016;
 - Proponent's Response to the NSW RFS, dated 3 November 2016, 18 October 2017;
 - Sydney Water Referral Response and submissions, dated 21 August 2017;
 - Ausgrid Referral Response and submissions, dated 12 July 2017;
 - TransGrid NSW Referral response and submission, dated 13 July 2017;
 - Proponent's *Response to Submissions | Planning Proposal for Ralston Avenue, Belrose*, dated 25 October 2017;
 - Proponent's *Planning Proposal for Residential Subdivision, Ralston Avenue, Belrose, Revised Transport, Traffic and Accessibility Report*, dated September 2017;
 - Proponent's *Ralston Avenue, Belrose Proposed Residential Development Noise Impact Assessment of TransGrid Substation*, dated October 2017;
 - Proponent's *Ralston Avenue Belrose Planning Proposal - Response by RFS*, dated 25 October 2017;
 - Proponent's *Aboriginal Archaeological & Cultural Heritage Assessment Proposed Residential Development Ralston Avenue, Belrose, NSW (Lot 1 in DP 1139826)*, dated 1 November 2017;
 - Letter from the Department to Council, 21 December 2017;
 - the Council Assessment Report;
 - Council Assessment Report, dated 19 December 2017, including attachment Booklet;
 - *Planning Proposal PP_2015_WARRI_001_00 - Alteration of Gateway determination*, dated 12 May 2017; and
 - Gateway Determination for Oxford Falls Strategic Land Review, dated 1 November 2017.
- Northern Beaches Council *Report to Ordinary Council Meeting Item 10.1 Planning Proposal – Deferred Lands in Oxford Falls and Belrose – Warringah Local Environmental Plan 2011*, dated 27 March 2018.
- *Planning Circular 16-004 – Independent reviews of the plan making decisions* (the **Planning Circular**); and

- *Planning Proposals: A guide to preparing Planning Proposals 2016* (the **Guide to planning proposals**).

4.1 Relevant planning policies, legislation and framework

47. The key strategic planning documents are *A Metropolis of three cities - Greater Sydney Region Plan*, March 2018 and the *Eastern Harbour City Our Greater Sydney 2056 North District Plan* March 2018. The Planning Proposal and Council's Assessment Report were prepared under earlier versions of these plans.

48. The WLEP 2011 identifies the following permissible uses for R2 Low Density Residential zoned land:

Permitted without consent: Home-based child care; Home occupations

Permitted with consent: Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Veterinary hospitals.

49. The WLEP 2011 identifies the following permissible uses for RE1 Public Recreation zoned land:

Permitted without consent: Environmental facilities; Environmental protection works; Roads

Permitted with consent: Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs; Car parks; Child care centres; Community facilities; Emergency services facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Water recreation structures.

50. The WLEP 2011 identifies the following permissible uses for E3 Environmental Management zoned land:

Permitted without consent: Home-based child care; Home occupations

Permitted with consent: Aquaculture; Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Home businesses; Home industries; Horticulture; Recreation areas; Roads.

51. The framework for considering bushfire impacts of the Planning Proposal is the Ministerial Direction under section 9.1 (formally s117) of the EP&A Act. *Direction 4.4 – Planning for Bushfire Protection (the Direction)* which applies to “all local government areas in which the responsible Council is required to prepare a bush fire prone land map under section 146 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act” (cl 4.4(2)).

52. The Direction applies when “relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.” (cl 4.4(3)). It includes the requirement that “In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made” (cl 4.4(4)). Furthermore, “a planning proposal must have regard to *Planning for Bushfire Protection 2006* (cl 4.4 (5)(a)).”

53. Section 2.3 of *Planning for Bush Fire Protection (2006)* states that:

“LEP amendments that affect BPAs [bush fire prone area] need to address the planning

principles of PBP (see below). Where appropriate (sic) the proposed land uses must be considered with respect to bush fire protection (including appropriate setbacks).

If a proposed amendment to land use zoning or land use affects a designated BPA, then the section 117(2) Direction No 19 must be applied (section 117 of the EP&A Act provides for the Minister for Planning to direct a council, in relation to the preparation of a draft LEP, to apply the planning principles specified in that direction)."

54. Section 2.3 of *Planning for Bush Fire Protection (2006)* establishes that the Planning Principles for Rezoning to Residential Land in Bush Fire Prone Areas are:
 - a. *"Provision of a perimeter road with two way access which delineates the extent of the intended development;*
 - b. *Provision, at the urban bushland interface, for the establishment of adequate asset protection zones for future housing;*
 - c. *Specifying minimum residential lot depths to accommodate asset protection zones for lots on perimeter roads;*
 - d. *Minimising the perimeter of the area of land, interfacing the hazard, which may be developed;*
 - e. *Introduction of controls which avoid placing inappropriate developments in hazardous areas; and*
 - f. *Introduction of controls on the placement of combustible materials in asset protection zones."*
55. Section 4.1 of *Planning for Bush Fire Protection (2006)* provides controls for residential subdivision. These include specific objectives and performance criteria for Bush Fire Protection measures, which would be considered in any future development application for a residential subdivision of the subject land.
56. The Section 9.1 (formerly section 117) *Direction 2.1 Environment Protection Zones* applies when a relevant planning authority prepares a planning proposal. This direction sets out that:
 - "(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*
 - (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands"."*

4.2 Bushfire Impacts and public safety

Findings of the ABAC Independent review of Bushfire Risks

57. As set out by the scope of works detailed at paragraph 36, the Independent review was completed on 12 October 2018 and included a review of the bushfire risk assessments prepared by Council (the Blackash Review 2017) and the Proponent (the TBE Report 2017). The ABAC Addendum Independent review was completed on 18 December 2018 and reviewed additional documents including the Proponent's EcoLogical Report and Fuel Management Plan. This Addendum confirmed the conclusions of the Independent review.
58. With regard to the consideration of the bushfire risk from the Planning Proposal, the ABAC Independent review identified that:

“The TBE assessment has addressed some of the issues raised by the Blackash review, it has not demonstrated that the development proposed via the planning proposal is appropriate in the context of the surrounding bushfire prone landscape.

The TBE assessment adopts a technical and numerical approach to the question as to the relationship between the planning proposal and the Direction.

In several instances, the 2017 TBE assessment appears to seek to demonstrate compliance of the proposal with reference back to what the project objectives are, instead of the provisions of the Direction.

This is not a criticism of the TBE assessment, which is an apparently sound assessment of the concept residential subdivision which is the subject of the planning proposal. The assessment does however, appear more suited to an analysis of the proposal for the purposes of assessment of a Development Application as if the land was already zoned for residential purposes.

Unfortunately, the broader strategic question is not answered, however, and the assessment does not address the issue of whether or not the proposal is appropriate in the considerations of risk required by the Direction.”

59. With regard to safe evacuation in the event of a bushfire, the ABAC Independent review identified that: *“It is considered that while a perimeter road is proposed, there are risks associated with relying on perimeter roads for evacuation in a bushfire emergency. This is simply because the land to one side of the perimeter road will contain the bushland that will potentially be on fire.”*

60. With regard to the stated benefits of reducing bushfire risk to existing residential development, the ABAC Independent review stated that:

“In relation to residential development to the south-east of the area the subject of the planning proposal, it is perhaps the case that the proposal, if realised, would benefit some eight (8) existing residential allotments along Elm Avenue and Calool Crescent which directly adjoin the eastern boundary of the south-eastern part of the subject land. The additional APZ for electrical easements would facilitate maintenance of land along a length of the urban/bushland interface in that area of approximately 225 metres.

Overall, if the benefits that flow to the existing development is the removal of hazardous vegetation by the planning proposal, then the risk that arises as a consequence of the proposed residential precinct is that residential development will extend further west from the existing urban area into that vegetation and increase the net perimeter of residential areas that will be liable to exposure to a bushfire in that vegetation.

Put simply, if a major bushfire event was to impact on the western part of the residential area in Belrose, any additional residential development that might result from the planning proposal would have negligible benefits in terms of mitigating bushfire impacts on existing residential properties. Any benefits that might arise in this respect would be offset by the risks for the additional residential development (159 allotments) extending west from Ralston Avenue and Wyatt Avenue into the area predominated and surrounded by bushfire prone vegetation.”

61. The ABAC Independent review concluded that:

- *“Residential development per se is not an incompatible land use in bushfire prone areas. Rather it is an inappropriate development in those areas when there are clear risks associated with the proposed introduction into a bushfire prone landscape. This review has concluded that there are potential and clear risks arising from the planning proposal.”; and*
- *“Consideration of the Blackash review and the 2017 TBE assessment does not lead to the conclusion that the (now revised) concept presented via the planning proposal satisfactorily addresses all potential bushfire issues. The TBE assessment is technical in nature and does not resolve the strategic issues to demonstrate that the development is appropriate”.*

Proponent's views

62. The Proponent recognised that the subject land contained risk of bush fire impacts. The Proponent's TBE Report 2017 identified that *'bushfire can potentially affect the site from the surrounding forest and health vegetation communities resulting in possible ember attack, radiant heat and potentially flame attack.* However, this assessment found that the bushfire risk to the rezoning proposal *"can be mitigated by a suite of bushfire protection measures which when implemented can be managed in perpetuity."*
63. The Proponent's TBE Report 2017 identified that the:
- *"Planning Proposal is no different in topography to many nearby residential communities, and significant bushfire planning design measures have been implemented in regard to asset protection zones, road access design as well as the ongoing fuel management of nearby hazards. Notwithstanding the extent of planning undertaken to date is compliant with PBP, it is clearly understood that the RFS require additional defendable space in the form of broader asset protection zones and that has been provided."*
 - *"The bushfire constraints have been highlighted and asset protection zones (APZ) have been recommended, based on the concept subdivision plan. Recommendations have also been made for future road and fire design, fuels management, traffic management, emergency management, building construction, water supply and peripheral land management."*
64. The Proponent's TBE Report 2017 considered the design and compliance of the proposed APZs with the performance criteria established in the *Planning for Bush Fire Protection 2006* and concluded that:
- *"The APZs recommended exceed the minimum requirements outlined in PBP for subdivision development";* and
 - *"APZ's are generally situated on slopes of less than 18 degrees. There are a select few areas where the slopes exceed 18 degrees, these areas are rock ledges and can be incorporated into APZ management. Previous correspondence to the NSW RFS and the preparation of a Fuel Management Plan details the ongoing management of the APZs."*
65. In response to concerns raised in relation to the establishment and management of the APZs by the NSW RFS, the Proponent stated in *Ralston Avenue Belrose Planning Proposal - Response by RFS*, dated 25 October 2017, that:
- *"The reporting has been provided demonstrating that both APZ and strategic outer fire zones can be managed in accordance with ecological integrity not affected";*
 - *"This is incorrect and the reporting has been provided demonstrating that APZs are not on land steeper than 18 degrees and the development precinct has been informed by the land topography";* and
 - *"Further, we have provided a detailed fuel management plan that clearly identifies the management of APZs can be undertaken and requires no RFS resources."*
66. With regard to access and evacuation during fire events, including bushfires, the Proponent's TBE Report 2017 stated that:
- *"Future residential development within the site will require access to Ralston and Wyatt Avenue in the east to connect with the existing public road structure of Belrose. The two way road system is critical to bushfire planning being successful in any emergency event.
Road hierarchy must be designed to achieve sufficient traffic flow in order to enable an emergency evacuation in quick time and the proposed road system achieves that aspiration.
The planning proposal complies with the principles for rezoning of residential land as well as the acceptable solutions outlined in PBP for subdivision developments."*

- *“Perimeter roads, connections to internal roads and external egress to the main road limit the potential for traffic congestion therefore maintaining good traffic fluidity for any uncontrolled evacuations. The road design has very specifically created linkages ‘from the perimeter road design into the central residential zone’ and vice versa, so that traffic flow can move away from the source of fire.*

In addition, the egress roads of Ralston Avenue and Wyatt Avenue are both 20m in width and are capable of providing fluid traffic flow in times of emergency. It is recommended that Ralston Avenue and Wyatt Avenue (the primary evacuation routes from the subdivision) utilise the widest possible pavement width within the existing 20m road reservation. A pavement width of 13-15 metres would be acceptable.

The main road intersection/s onto Forest Road (via Ralston and Wyatt) both provide controlled intersections. Indeed the long length of Ralston and Wyatt also provide a very long queue capacity for vehicles in an emergency event. Evacuation can be thwarted by hazardous vegetation occurring near roads and causing pinch points.”

67. The Proponent’s TBE Report 2017 identified that the subject land indicated to be rezoned as R2 is in close proximity to the nearest NSW RFS neighbourhood safer places including Belrose Public School, Bambara Reserve (Belrose Oval) and Belrose Community Centre.
68. The Proponent’s submission to the Commission, dated 8 March 2018, stated that its review of the bushfire risks *“found evacuations routes and timeframes were acceptable and the proposal would result in benefits to the broader community due to improvements to bushfire management on the subject land and the creation of a much more bushfire resilient urban/bushland interface.”*
69. The Proponent’s EcoLogical Peer Review stated that *“The proposal exposes more dwellings to bushfire attack than exist at present, however, the new dwellings will be largely bushfire resilient, particularly if Strategic Fire Advantage Zones and/or enlarged APZ are provided in key locations. A significantly safer urban interface for the locality appears feasible, at least in terms of building survival. It is probable that much lower building loss will occur under the proposal (including its sheltering of the existing interface) than under the existing situation. Furthermore, this could be improved substantially with fuel management on the TransGrid land.”*
70. Overall, the Proponent’s TBE Report 2017 concluded that *“[t]he past fire history of the surrounding landscape is such that considerable planning focus has been undertaken for traffic capability, asset protection, emergency management, fire trail construction, hazardous fuels management, building construction standards, water management and peripheral land management on land owned by the land owner. The bushfire risk posed to the rezoning proposal however can be mitigated if a full suite of bushfire protection measures (including APZs) are implemented and managed in perpetuity.”*
71. The Proponent’s TBE Report 2017 also concluded that:
 - *“The R2 low density residential zoning is a suitable development class and is unremarkable in comparison to other similar topographical developments.*
 - *The requirements established in s.177 (sic) Direction 4.4 Planning for Bushfire Protection and Plan Sydney have been satisfied.*
 - *Safe evacuation can be provided through three evacuation routes leading through established residential areas and away from the hazard.*
 - *APZs can be provided that exceed the minimum requirements of PBP 2006 and AS3959.*
 - *The wider landscape beyond the APZ will be managed by Strategic Fire Advantage Zones.*
 - *Adequate APZs adjacent to power lines will be implemented to ensure access is not affected by unmanaged lands.*

- *The planning proposal will improve bushfire protection measures afforded to existing development through the removal of hazardous vegetation and improved access for firefighting suppression.*
- *Costs for the development and implementation of bushfire protection measures will be imposed on the landowner and the developer.*
- *There have been no additional burdens on emergency services demonstrated.”*

Council and State government agency views

72. Council commissioned Blackash Bushfire Consulting to undertake two reviews of the potential bushfire risk associated with the rezoning and potential establishment of residential development within the subject land. The Blackash Review 2017, stated that:
- *“they fail to adequately address the fundamental principle of the suitability of the site for development. It is recognised that a significant amount of time and energy has been devoted to the proposal to date. However, the Planning Proposal fails to look at the broader site context and bushfire safety provisions that need to be considered from a strategic planning perspective. The fundamental question of the suitability of the site for development has at best, been rudimentary.”; and*
 - *“Planning decisions, which avoid the placement of inappropriate developments in high-risk locations, is consistent with actions identified in the NSW Department of Planning and Environments (DoPE). Guideline ‘A Plan for Growing Sydney’ (DoPE 2014). Consistency with A Plan for Growing Sydney is a requirement specifically identified in the DoPE Gateway Determination for the Planning Proposal. The proposal does not examine the strategic planning requirements of Plan Sydney, nor does it comply or address the requirements established in the s.117 Direction 4.4 Planning for Bushfire Protection 2006.”*
73. The Council Assessment Report concluded that:
- “The Planning Proposal would result in positive outcomes for the Aboriginal Community as it would facilitate the ability of the MLALC to derive economic use of Aboriginal land acquired under the Aboriginal Land Rights Act 1983. The VPA [Voluntary Planning Agreement] also propose funding of Aboriginal housing, employment, training, youth and health services within the Greater Sydney area. However, the Planning Proposal and VPA are not the only means of achieving these outcomes.*
- An increase in housing supply can also bring social and economic benefits, however not when the proposed development is inconsistent with local and state policies as demonstrated in Council’s assessment.*
- Council considers the overriding social and economic considerations in determining this proposal should be the protection of human life and property. Both the RFS and Council’s Bushfire Consultant conclude that the risk to life and property from this proposal is unacceptable and that this rezoning should not proceed in its current form.”*
74. The NSW RFS in its letter dated 18 October 2017 stated that:
- *“The NSW Rural Fire Service (NSW RFS) has further reviewed the modified proposal and supplementary report, and advises that the proposed re-zoning of the site to allow significant residential development is not supported.”*
 - *“The NSW RFS considers that the proposal as amended is not consistent with s117(2) Environmental Planning and Assessment Act 1979 as it does not achieve the primary objectives: to protect life, property and the environment from bush fire hazards by discouraging the establishment of incompatible land uses in bush fire prone areas and to encourage the sound management of bush fire prone areas;” and*
 - *“The proposal cannot meet the aims and objectives of Planning for Bush Fire Protection 2006 (PBP) – (to provide for the protection of human life (including fire fighters) and to minimise*

impacts on property from the threat of bush fire).... The proposed development is likely to result in unsustainable and problematic bush fire risk management of the landscape for the NSW RFS and the future land owners. This would place our firefighting resources under increased pressure as well as placing firefighters and a new community within an unacceptable area of risk."

75. The NSW RFS in its supplementary submission to the Commission dated 28 February 2018 stated:

"The NSW RFS is concerned at a 'macro-scale' with the site, due to its location on an isolated peninsular with steep down slopes and lengthy fire runs from the south, west and northwest aspects. Given the site extends into the landscape along the peninsular (sic), it maximises the perimeter of the development interfacing the bush fire hazard.

The nature of the landscape means a bush fire will be drawn into the site at several pinch points along the perimeter road potentially isolating the peninsular (sic) and placing occupants and emergency services personnel at considerable risk. Safe evacuation routes may not therefore be available to residents and there is no safe public refuge space available for residents to relocate in instances where evacuation is not possible.

We know based on historical events, that there is potential for the site to be impacted upon by extreme bush fires. Bush fires have impacted the site in 1971, November 1980, October 1988 and again October 2002. The most recent fire in 2002 moved rapidly from the west towards the only house on the site and the major electricity substation further to the east. Luckily, as there was only one home being threatened the NSW RFS was able to successfully protect the family in their home. Had there been more homes in the area, this may not have been possible."

The Commission's consideration of the Material

76. The Commission accepts the findings and conclusions of the ABAC Independent review and its Addendum, as set out in paragraphs 57 - 61 and the findings of the NSW RFS, as set out in paragraph 74 - 75 that the Planning Proposal presents an unreasonable risk to human life and property.
77. The Commission notes, as set out in the Direction, *"a planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained 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."*
78. The Commission notes that, as set out in paragraph 74, and discussed in the ABAC Independent review, the Council has not obtained, as required by the Direction, *"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."*
79. The Commission notes, as set out in paragraph 58, that measures can be adopted in a future development application for a residential subdivision of the subject land to lower bushfire risk but that, overall, the risk to a new residential development would be significant. Accordingly, the Commission accepts the ABAC Independent review's conclusion that the Planning Proposal does not provide sufficient strategic justification to amend the current zoning of the subject land to increase the density of and diversity of allowable development in a constrained, bushfire prone area.
80. The Commission acknowledges that the Planning Proposal contains an indicative plan to establish a new residential development. However, as set out in paragraph 48, if the rezoning were to proceed a range of land uses would be permissible within the R2 zone, including childcare

centres, educational facilities and/or hospitals. The Commission considers that the bushfire risks associated with the full extent of allowable development types needs to be factored into any decision making, including the potential for a greater density than one dwelling per residential allotment as anticipated in the Planning Proposal.

81. The Commission acknowledges that the Proponent has recommended considerable design refinement to seek to address the performance requirements for a development application for residential subdivision in Section 4.1 of *Planning for Bush Fire Protection (2006)* to justify the rezoning. However, the Commission finds that the subject land is not suited to an increase in the density of residential development, and other allowable development, as permitted on land zoned R2 due to its location on an isolated peninsula with steep slopes adjoining a national park, its difficult evacuation pathways (partially underneath high voltage lines), the proximity of the Substation and inadequate evacuation / response times.
82. The Commission accepts ABAC Independent review's conclusion in paragraph 60 that any benefits to existing development that might arise from residential development of the subject land and improved bushfire management would be offset by the increased risks to the additional residential development. Furthermore, the Commission notes, as set out in paragraph 27, that under the *Rural Fires Act 1997*, public authorities and owners of land can be required to undertake works to prevent the occurrence of bush fires.
83. Based on the findings of the ABAC Independent review outlined in paragraphs 57 - 61, the Commission finds that the proposal is inconsistent with the objective of the Direction "*to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas*" and the aims and objectives of *Planning for Bushfire Protection (2006)*. The proposal also does not meet the requirements of the Direction to "*contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks*" or to "*minimise the perimeter of the area of land interfacing with the hazard which may be developed*".
84. The rezoning would be contrary to similar objectives for rezoning in *Planning for Bushfire Protection (2006)*. While a future residential subdivision may be able to satisfy a number of the technical requirements of *Planning for Bushfire Protection 2006*, it does not meet specific objectives for residential subdivisions, in particular, to "*minimise perimeters of the subdivision exposed to the bush fire hazard, hourglass shapes, which maximise perimeters and create bottlenecks, should be avoided*" and "*provide for the siting of future dwellings away from ridge-tops and steep slopes - particularly up-slopes, within saddles and narrow ridge crests.*"
85. For the reasons set out in paragraphs 76 - 84, the Commission finds that the Planning Proposal should not proceed.

4.3 Biodiversity impacts

Proponent's views

86. The Proponent's **Ecological Assessment**, states that the Planning Proposal:
"aims to redevelop 17.27 hectares (or 12.6% of the total site area) to deliver 156 residential lots and a 3,000m² public park as shown in the indicative subdivision layout plan..... The remaining 119.05 hectares will be retained as natural bushland with Asset Protection Zones and recreation trails adjacent to the future residential land."
87. The Ecological Assessment identified that the subject land was known to provide habitat for threatened flora and fauna. Specifically, the Ecological Assessment identified 12 threatened species and two endangered ecological communities as occurring in or near to the subject land. The Ecological Assessment also identified three additional threatened species which were considered to be potentially present in the subject land.
88. The Proponent's Ecological Assessment identified that the direct and indirect ecological impacts of

the Planning Proposal would include:

Direct ecological impacts:

- Loss of confirmed habitat for *Grevillea caleyi*, *Tetratheca glandulosa*, *Eucalyptus leuhmanniana*, *Angophora crassifolia*, Red-crowned Toadlet, Eastern Pygmy Possum, Rosenberg's Goanna and other birds, bats and arboreal mammal species predicted to occur on the subject land; and
- Clearing 0.59 ha of Coastal Upland Swamp EEC and 0.61 ha of Duffys Forest EEC.

Indirect ecological impacts:

- Increased edge effects, including increased noise and light spill, weed invasion and potential for predation on native species by feral pests, into other high and moderate quality habitat;
- impacts on the dispersal, foraging and breeding habitat of species, including the Giant Burrowing Frog; and
- alteration to the natural overland flow regimes, including subsequent changes in water quantity and quality, and indirect effects along the ephemeral and perennial drainage catchments that radiate off the plateau.

89. The Proponent's Ecological Assessment identified that:

- *"The adequacy of the planning proposed was assessed as part of a biocertification assessment undertaken by EcoLogical Australia in late 2015, which provided commentary on the offsetting proposal. That report's calculations will require updating to accommodate recent plan changes largely from expansion of APZs."*
- *"The 7 part test of significance has considered the impacts of the 2017 APZ. The 7 part test of significance considers that APZ areas will be of no value for biodiversity calculations. Despite this the areas will be used by a variety (sic) of species."*

Council and State government agency views

90. The Council Assessment Report stated that the Planning Proposal *"would likely have a significant impact on biodiversity and threatened species.... These impacts would result from the clearing/modification of at least 25 Hectares of native vegetation, stormwater contamination and bushfire management practices within APZs and strategic fire advantage zones"*.

91. The Council Assessment Report stated that the clearing/modification *"estimate is based on the total 28.91 ha floristic impacts, excluding the 3.57ha of cleared area (Table 1, pg iv, Ecological Assessment, Travers, 2017). Otherwise, the estimate is taken from the 15.57 hectare R2 Low Density Residential Zone (assumed to be cleared), plus the 10.64 hectares of APZs in the E3 Environmental Management zone (including Transgrid easements) which is assumed to be modified"*.

92. Furthermore, the Council Assessment Report stated:

- *"Council is not satisfied that the environmental impacts have been adequately assessed and is concerned that the Proponent's Assessment of Significance relies on unproven mitigation measures which should not be considered in determining the degree of the effect on threatened species (e.g. stormwater controls or restrictions on cat ownership)"; and*
- *"Council staff recommended that should the Planning Proposal proceed, the proposed E3 Environmental Management Area is zoned E2 Environmental Conservation, consistent with zone objectives, permissible land uses and intended use of this land (an offset)."*

93. At its meeting with the Commission on 5 March 2018, and in subsequent correspondence, OEH reiterated its concerns regarding the biodiversity impacts of the Planning Proposal. OEH was concerned that the Planning Proposal could result in serious and irreversible impacts on protected threatened species and threatened ecological communities, that biocertification has not yet been achieved for the subject land, and the Proponent's offsetting arrangements remain unclear,

particularly as parts of the offset (in the E3 zone) are to be included as the proposed APZ. OEH confirmed the statutory considerations required under the *Biodiversity Conservation Act 2016*, including for Serious and Irreversible Impacts (SAIL). This submission stated:

“The concept of SAIL is a central component of the NSW biodiversity offset scheme under the Biodiversity Conservation Act 2016. It is fundamentally about protecting threatened species (i.e. Grevillea caleyi) and threatened ecological communities (i.e. Duffys Forest) that are most at risk of extinction from potential development impacts and activities. Hence the imperative to avoid impacts at the planning proposal stage.”

94. Additionally, through its submission dated 26 June 2017, OEH raised concerns that:
- *“OEH was consulted at pre Gateway stage in 2015, however the substantial issues raised by OEH at that time have not been satisfactorily addressed”;*
 - *“Approximately 30 hectares of native vegetation is to be cleared, plus a further area for bushfire asset protection will be substantially modified.”*
 - *“The extent of clearing will result in significant impacts on threatened species and their habitat.”*
 - *“The strategy for compensating for loss of biodiversity and proposed conservation measures (i.e. as proposed under biodiversity certification) remains unclear, despite references to possible biobanking of land and transfer of lands to the OEH estate or co-management of the land. The Biodiversity Certification Strategy is not up to date and it does not form part of the exhibition package.”*
 - *“OEH has not been consulted about the possible transfer of lands or co-management and no agreement has been reached.”*
95. OEH concluded in its submission dated 26 June 2017 that it *“has significant concerns regarding this proposal and cannot support it in its current form. OEH continues to support a biodiversity certification approach for this proposal”*

The Commission’s Consideration of the Material

96. The Commission accepts the positions of Council and OEH, as set out in paragraphs 90 - 95, that the Planning Proposal would be likely to have significant impacts on biodiversity and threatened species.
97. The Commission notes the extent of clearing / modification resulting from the proposed subdivision is unclear. Under the indicative subdivision plan, part of the APZ will be within the area of the subject land that is proposed to be zoned E3 Environmental Management and will likely be impacted to establish an effective APZ. The APZ areas have also been included in the proposed offset area.
98. The Commission notes that biocertification has not yet been achieved for the subject land and that OEH has stated that it is unable to support the Planning Proposal in its current form. Furthermore, the Planning Proposal’s likely impacts on the threatened species (*Grevillea caleyi*) and the threatened ecological community (Duffy’s Forest) may be an impediment to approval of any future application for subdivision.
99. The Commission finds that the Planning Proposal is likely to significantly impact a number and range of threatened species and native vegetation communities and that there is uncertainty regarding the extent, management and mitigation of these impacts.
100. For the reasons set out in paragraphs 96 - 99, the Commission finds that the uncertainty of the extent and nature of the impacts to biodiversity means that the appropriateness of rezoning the subject land to accommodate 156 residential allotments has not been justified and would be inconsistent with *Section 9.1 (formerly section 117) Direction 2.1 Environment Protection Zones*.

4.4 Infrastructure

Proponent's views

101. The Proponent stated in its Supplementary Report that *"The indicative site layout has been designed to allow for the adjoining electricity substation, including management of bushfire risk and safe evacuation."*
102. The EcoLogical Peer Review stated, in relation to the TransGrid Substation that:
"The TransGrid substation is substantially better protected from fire attack by the planning proposal and if fuel management were also to occur within its boundary it is possible for the radiant heat exposure to decrease well below 10 kW/m². It is not possible for a <10 kW/m² exposure without the shielding provided by the planning proposal. Given the significance of this specific substation (servicing a large part of the Sydney population and potentially thousands of houses under bushfire attack) the planning proposal is considered NOT to increase the risk to life; rather it lowers that bushfire risk."
103. The Proponent's *Response to Submissions | Planning Proposal for Ralston Avenue, Belrose*, dated 25 October 2017 stated that the *"required maintenance works could be undertaken by way of a management agreement between the community title and TransGrid to avoid increased maintenance costs to TransGrid."*
104. The Proponent provided the *Ralston Avenue, Belrose Proposed Residential Development Noise Impact Assessment of TransGrid Substation*, dated 24 October 2017, which concluded that:
 - *"the noise assessment results, no additional noise mitigation is required to the proposed residential subdivision. The noise emissions from the Sydney East TransGrid substation are expected to comply with the NSW INP [Industrial Noise Policy] criteria at the proposed boundary of the houses closest to the substation"; and*
 - *"no additional noise mitigation measures are required to be applied to the proposed residential subdivision, to meet the external NSW INP, and the internal AS 2107 design sound levels for sleeping areas"*.

Council and State government agency views

105. TransGrid identified at the meeting with the Commission on 23 March 2018 and through its letter to the Council, dated 13 July 2017, that the Planning Proposal may result in unintended consequences to the effective protection and operation of the TransGrid's infrastructure located adjacent to the subject land.
106. TransGrid identified in its letter to the Council, dated 13 July 2017, that:
 - *"the proponent has not considered TransGrid's existing land rights including its registered easements that have been acquired to ensure the safety and security of the public as well as access to its transmission lines for operations and maintenance purposes... The proposed development would constrain TransGrid's access to its easements and is a situation that is not acceptable for essential public infrastructure.";*
 - *"The potential requirement for shutting down TransGrid's power lines in the event of a large residential fire or bushfire to allow safe egress of the community would cause significant operational issues and load shedding consequences with switching off the 330kV feeders coming into the Sydney East substation.";* and
 - *"As it stands the proposal would likely result in unacceptable noise levels for future residents due to the proximity of dwellings to this major infrastructure. The noise intensity varies inversely with distance, however the distance between many of the proposed lots and the substation is inadequate, and the proposal site may not be able to accommodate a suitable noise buffer."*
107. TransGrid concluded that it objected to the Planning Proposal *"due to the unacceptable safety risk to the public, and the need to maintain the highest level of security for this essential infrastructure which serves to supply bulk power to the people of Sydney."*

108. TransGrid's submission to the Commission, dated 8 March 2018, subsequently stated that:

“Smoke arising from fires (such as bushfires and building fires) reduces the natural insulating properties of air, due to the concentration of airborne particulate matter. Thick smoke around high voltage transmission lines can act as a conductor, creating a risk of electrical flash-overs to the ground. This flashover risk is higher if thick smoke is coupled with an intense fire beneath the lines. In such conditions there is a heightened risk that people / vehicles passing underneath the live transmission lines, may be struck by an electrical flash-over. This would likely result in significant injury or death.....

....In the event of a fire in the vicinity of Sydney East, and the Rural Fire Service making a request to TransGrid to turn-off electrical supply to the substation, there would be joint risk discussions before the request was agreed to. The risk discussions would include consideration of the impact to the security of the electricity network and associated impacts to the wider community. It is very uncommon for TransGrid and the RFS to agree that de-energisation is the most appropriate risk mitigation, and it is very unlikely that TransGrid would agree to de-energise Sydney East substation, due to its criticality.

The proponent's bushfire risk management plan for the proposed subdivision, should not rely on an expectation that the transmission lines around Sydney East substation would be de-energised, as this is extremely unlikely. Further, in certain fire scenarios the road passing beneath our transmission lines should not be identified as a suitable emergency egress route for the residents.”

109. The NSW RFS, as set out in paragraph 27, raised concerns that the proximity of wires over Wyatt Avenue could create conditions susceptible to arcing during bushfire events. This could require the need to depower the sub-station to safely evacuate residents (which could have far reaching impacts).

The Commission's consideration of the Material

110. The Commission has considered the views of the Proponent, TransGrid and the NSW RFS, as set out in paragraph 101 - 109. The Commission accepts TransGrid's conclusion that in the event of a bushfire emergency in the subject land, that significant disruption to the electricity supply for the greater Sydney region would occur if depowering the 330kV feeders coming into the Sydney East substation were required.

111. The Commission finds that the indicative subdivision layout and the road passing under the transmission lines may result in the need to depower the adjacent substation which could result in a significant impact to the wider Sydney area through the loss of power, including essential services. Due to these significant impacts to the wider community, the depowering of the Substation is undesirable and consequently the Proponent should not rely on the road under the transmission lines as providing safe evacuation of the subject land in the event of a bushfire.

112. The Commission finds that potential impacts of the Planning Proposal to the safe and effective maintenance and operation of TransGrid's infrastructure are not acceptable from a public interest perspective and that the existence of the 330kV feeders may elevate the risk to those seeking to evacuate the subject land and to firefighters.

5. REVIEW AND RECOMMENDATIONS

113. The Commission has reviewed and considered the Material.

114. The Commission recognises that the importance of considering whether the Planning Proposal is likely to result in an unreasonable risk to human life and property from the threat of bush fire in advising on suitability of amending the WLEP 2011.

115. As set out in paragraphs 76 - 85, the Commission accepts the findings of the NSW RFS and the ABAC Independent review that the Planning Proposal presents an unreasonable risk to human life and property and should not proceed.

116. While the priority of protecting human life and minimising risk to property from bushfire threats is acknowledged, the Commission finds that other aspects of the Planning Proposal also contribute to its recommendation that the proposed instrument described and justified by the Planning Proposal should not be made. As set out in paragraphs 100 and 112, this includes ongoing uncertainty regarding the impacts to biodiversity and essential public infrastructure.
117. The Commission does not recommend that the proposed instrument should be made due to the inconsistencies with *Section 9.1 Direction 4.4. Planning for Bushfire Protection* and *Section 9.1 Direction 2.1 Environmental Protection Zones*, the aims and objectives of *Planning for Bushfire Protection 2006*, and the uncertainty regarding the impacts to essential infrastructure, namely the adjacent substation.



Ms Annelise Tuor (Chair)
Member of the Commission



Stephen O'Connor
Member of the Commission