



Review of Strategic Assessment Metropolitan LALC landholdings in Northern Beaches LGA

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1 Introduction

This report reflects the independent peer review of the Strategic Assessment of the Metropolitan Local Aboriginal Land Council (MLALC) landholdings in the Northern Beaches, carried out by Barr Planning for the Department of Planning, Industry and Environment (DPIE).

The Strategic Assessment was undertaken by City Plan Strategy and Development Pty Ltd (now trading as GYDE Consulting), in association with Craig & Rhodes, Travers Bushfire and Ecology, JMT Consulting and in consultation with the MLALC.

The objective of the Strategic Assessment is two-fold. Firstly, it undertakes a high level review of landholdings to support the preparation of a Development Delivery Plan (DDP) in accordance with the Aboriginal Land Planning Framework and secondly, it will provide guidance to the MLALC when making decisions about how to manage their land portfolio. The Strategic Assessment focused on sites within the Northern Beaches Local Government Area (LGA) and adopted a three step process, involving a contextual analysis, site specific review, and priority site assessment of the MLALC land holdings.

1.1 Purpose of the Review

The preparation of a DDP is a collaborative process between DPIE and the relevant LALC, based on the information provided by the LALC. The Aboriginal Land SEPP Guideline outlines the information requirements for LALCs that want to have land included in the Aboriginal Land SEPP.

As part of its role in facilitating the preparation of a DDP for MLALCs land holdings in the Northern Beaches, DPIE have commissioned a review of the Strategic Assessment. The purpose of this review is to evaluate the Strategic Assessment, having regard to the following two concerns:

- (i) Does the Strategic Assessment sufficiently address the requirements of the Aboriginal Land Planning Framework, specifically the requirements for inclusion of nominated land into a DDP, pursuant to Clause 9 of the AL SEPP?
- (ii) Does the Strategic Assessment provide adequate data and information to identify appropriate land for development, and then inform, assess and determine the types of activities proposed to be carried out on identified land?

2 Background

2.1 Aboriginal Land Planning Framework

In 2016, the NSW Parliament's Standing Committee on State Development *Inquiry into Economic Development in Aboriginal Communities* recommended that the planning system needed to better accommodate aspirations of the *Aboriginal Land Rights Act 1983* (ALR Act).

In response, the NSW Government released the Aboriginal Land Planning Framework to help LALCs across NSW better utilise their land. The Framework aligns the NSW planning system with the ALR Act to support better governance, strategic planning and more efficient use of land. The Framework provides for the development of DDPs and includes several documents including a State Environmental Planning Policy (SEPP), a Ministerial Direction, a Planning Circular and more recently a guideline. A summary of each of these is provided below.

2.1.1 Aboriginal Land SEPP

The *State Environmental Planning Policy (Aboriginal Land) 2019* (AL SEPP) came into force in February 2019. The AL SEPP:

- enables the making of Development Delivery Plans (DDPs) for land owned by LALCs and identifies the process for approving and amending DDPs;
- maps LALC landholdings that the SEPP applies to;
- requires a consent authority to consider a DDP when assessing a development application made by a LALC for land mapped in the AL SEPP; and
- makes certain development on land mapped under the AL SEPP and owned by a LALC regionally significant so that planning decisions will be made by the relevant planning panel rather than the local council.

2.1.2 Aboriginal Land SEPP Guideline

In November 2020, the *Aboriginal Land State Environmental Planning Policy (SEPP) Guideline* was released to provide tools and assistance to LALCs by outlining:

- The process for having land included in the AL SEPP;
- The process for having a Development Delivery Plan prepared;
- Guidance to assist LALCs to determine whether the AL SEPP is the most appropriate development pathway; and
- Planning support to help LALCs navigate the planning system.

2.1.3 Ministerial Direction

The Ministerial Direction – 5.11 Development of Aboriginal Land Council Land provides for a DDP or interim DDP to be considered when planning proposals are prepared by a planning proposal authority.

2.1.4 Planning Circular

Planning Circular PS 19-003 outlines administrative review processes available for plan-making decisions under Part 3 of the *Environmental Planning and Assessment Act 1979* for land subject to a DDP or interim DDP, that is shown in the AL SEPP.

2.2 Metropolitan Local Aboriginal Land Council

The Metropolitan Local Aboriginal Land Council (MLALC) was created under the ALR Act. The MLALC operates in accordance with the ALR Act by utilising its land assets to support the sustainability of its business to meet the needs of the Aboriginal community. In accordance with Section 51 of the ALR Act, the MLALC's primary objectives are *"improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are members of the Council"*.

In preparing a DDP, Clause 9(3)(b) of the AL SEPP requires that the responsible LALC or the Minister must have regard to the community, land and business plan adopted by the responsible LALC under the ARL Act.

The relevant adopted community, land and business plan is the *Metropolitan LALC 2016 – 2021 Community Land and Business Plan (CLBP)* was prepared in 2016, by the Community Land & Business Planning Subcommittee of the MLALC. The intent of the CLBP is to:

"show our members a clear direction and how the Land Council will progress over the next three years.

This involves planning for core Land Council issues such as Land, Community Benefit Schemes, Business Enterprise, Investments Aboriginal Culture and Heritage activities....

...This CLBP sets a long term vision for MLALC and is our strategy for the 5 years ahead. It aims to be our strategic guide for our members, community and stakeholders."

3 Summary of Strategic Assessment

The Strategic Assessment focused on sites within the Northern Beaches LGA and adopted a three step process, involving a contextual analysis, site specific review, and priority site assessment of the MLALC land holdings. The contextual analysis in Phase 1 of the Strategic Assessment commenced with an audit of all MLALC land holdings in conjunction with a review of the MLALC CLBP. A total of 197 land holdings were recorded and documented.

As the assessment focused on sites within the Northern Beaches LGA, 9 sites were identified for site specific review, to identify land suitable for development and/or conservation, followed by the prioritisation of sites, in order to ascertain an indicative sequence for future planning and investigation.

The findings of the Strategic Assessment indicated that there is short, medium and longer term development and/or conservation potential for all 9 sites and confirmed that there is opportunity to generate economic, social and environmental benefits, either through the recommended planning pathways, or with further investigation from these sites.

4 Review

The following provides a review of the Strategic Assessment, considering both the requirements of the Aboriginal Land Planning Framework, specifically the AL SEPP, and the findings and recommendations of each site.

4.1 General Review

Overall, the Strategic Assessment is a comprehensive evaluation and audit of MLALC land with metropolitan Sydney and an appropriate assessment of land proposed to be included in the DDP for MLALC land located in the Northern Beaches LGA.

4.1.1 AL SEPP Requirements

Clause 9 of the AL SEPP sets out the requirements for inclusion of nominated land into a DDP. The following table provides an assessment of the Strategic Assessment against the provisions of Clause 9, which need to be addressed in order to progress in preparing the DDP.

Table 1 Comparison of Clause 9 requirements with Strategic Assessment

Clause 9 requirement	Comment
(1) A development delivery plan for land must:	
(a) apply to all land to which this Policy applies that is owned by the same LALC, and	<p>The AL SEPP does not currently apply to any land owned by the MLALC.</p> <p>Phase 1 of the Strategic Assessment included an audit of all MLALC land holdings. It is assumed that all the land identified for inclusion in the AL SEPP is held in freehold title by MLALC and can be considered for inclusion. Land agreements and claims under the Native Title Act 1993 and the ALR Act operate under a different system to the NSW planning system and are unable to be included in the AL SEPP.</p> <p>This requirement can be satisfied.</p> <p>For completeness an appendix listing the 197 land holdings that were considered in Phase 1 could be included.</p> <p>The quality of the image provided in Figure 1 to be improved, including a readable legend.</p>

<p>(b) set out the general objectives of the LALC for the land, and</p>	<p>The Strategic Assessment notes the six main priorities of the MLALC CLBP.</p> <p>The selection criteria for sites in Phase 2 included consideration of those sites for which there were existing approvals for land dealings under the ALR Act; and sites where there were known cultural heritage items or significance, or sites that were adjacent to known cultural heritage items or significance. This criteria aligns with the priorities of the CLBP regarding land claims and the promotion of culture and heritage.</p> <p>This requirement can be satisfied.</p>
<p>(c) set out the nature of development proposed for the land, and</p>	<p>The findings of the Phase 2 for each identified site includes a statement regarding the nature of development proposed.</p> <p>This requirement can be satisfied.</p>
<p>(d) set out the basis on which the development is proposed, having regard to applicable economic, social and environmental factors, and</p>	<p>The findings of the Phase 2 Site for each identified site has generally considered environmental, social and economic factors.</p> <p>This requirement can be satisfied.</p>
<p>(e) set out strategies, actions and a program for achieving the objectives for the land, and</p>	<p>The Assessment identifies a priority level for each identified site, as having either short, medium or longer term potential.</p> <p>This requirement can be satisfied.</p> <p>For clarity, it is suggested that the timeframes be nominated as being either commenced or completed within the timeframe.</p>
<p>(f) contain other matters that the Minister thinks appropriate.</p>	<p>This is discretionary.</p>
<p>(2) A development delivery plan may also set out 1 or more of the following matters:</p>	<p>Inclusion of these matters is optional</p>

<p>(a) the bulk, scale and size of development proposed for the land to which the plan applies,</p>	<p>There are no specific details provided regarding the bulk, scale and size of development proposed for any site, with the exception of Site 1 Morgan Street which nominates a potential yield of 400 – 500 lots.</p>
<p>(b) measures to support Aboriginal cultural heritage that may be affected by development proposed for the land,</p>	<p>Some commentary is provided with regard to the protecting and preserving Aboriginal cultural heritage. The outcome of generating economic return is considered to be a measure that will generally support Aboriginal cultural heritage.</p> <p>However, this commentary is not considered to be detailed enough for inclusion in the DDP, as envisaged by Clause 9(2).</p>
<p>(c) measures to support strategic biodiversity conservation relating to the land,</p>	<p>Some commentary is provided with regard to the potential of some sites to support Action 66 Supporting landscape-scale biodiversity conservation and the restoration of bushland corridors. However, this commentary is not considered to be detailed enough for inclusion in the DDP, as envisaged by Clause 9(2).</p>
<p>(d) proposals for provision for public utility infrastructure and roads.</p>	<p>Some commentary is provided with regard to the potential to service some of the sites nominated as having development potential. However, this commentary is not considered to be detailed enough for inclusion in the DDP, as envisaged by Clause 9(2).</p>
<p>(3) A responsible LALC or the Minister must have regard to the following when preparing a development delivery plan or an amendment to a plan:</p>	
<p>(a) a regional strategic plan that applies to the region in which the land to which the plan applies is situated,</p>	<p>The Strategic Assessment has considered the objectives and actions of the Greater Sydney Region Plan, the North District Plan and various local strategic plans and policies.</p> <p>This requirement can be satisfied.</p>
<p>(b) the community, land and business plan adopted by the</p>	<p>The Strategic Assessment has considered the MLALC CLBP.</p>

<p>responsible LALC under the Aboriginal Land Rights Act 1983</p>	<p>For example, the Strategic Assessment notes that all requirements of the land dealings process have been followed for the Morgan Road, Belrose site with approval granted by the NSWLAC on 3rd November 2004.</p> <p>This requirement can be satisfied.</p>
<p>(c) any other matters the LALC or Minister considers relevant.</p>	<p>This is discretionary.</p>
<p>(4) A development delivery plan may also apply to land that is owned by a LALC that is not land to which this Policy applies.</p>	<p>Noted</p> <p>Only 6 of the 9 sites are proposed to be included in the AL SEPP. However, this clause would permit the three sites identified as having long term potential to also be included in a subsequently prepared DDP.</p>

4.2 Review of Individual Sites

The AL SEPP Guideline recognises that the purpose of a DDP is to identify a pipeline of development opportunities for LALC land. It is also important to acknowledge that LALC development proposals continue to be subject to the same environmental assessment criteria and legislative requirements as any other proposal at the planning proposal and development application stages.

On this basis, the extent of assessment required for inclusion in a DDP and the AL SEPP that has been provided for each site recommended for inclusion in the AL SEPP, is satisfactory. The three phase methodology adopted by the Strategic Assessment provides adequate data and information to identify appropriate land for development, and then inform, assess and determine the types of activities proposed to be carried out on identified land.

The following table sets out some additional comments that may be considered by the author of the Strategic Assessment to assist in clarifying intent, demonstrating the breadth of assessment that has been undertaken and providing for the practical interpretation and use of the Assessment.

Table 2 Additional Comments on Findings for Individual Sites

SITE	PLANNING PATHWAY (as per Table 3)	REVIEW COMMENTS
Priority: Short term potential		
Site 1. Morgan Road, Belrose		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Planning proposal ▪ Development application 	<p>Given the extent of analysis undertaken for this site, inclusion of specific detail regarding the planning opportunities should be considered. This may include an estimation of the scale of development and built form envisaged for site, and any key infrastructure that would be required to support new or additional development.</p> <p>This will assist in identifying further studies or investigations required, and assist in commencing discussions with relevant NSW agencies such as the Biodiversity Conservation Trust; the Environment, Energy and Science Group of DPIE; and Transport for NSW, as part of the planning proposal process.</p> <p>It is noted that parts of the site are identified as potentially suitable as biodiversity stewardship site. It is suggested that the conservation footprint be illustrated in green in Figure 3 and 19.</p>
Priority: Medium term potential		
Site 2. Aquatic Drive, Frenchs Forest		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Further investigation ▪ Planning proposal 	<p>Adding a clarifying statement to specify that comments made in relation to potential uses refer to the western lot, is suggested.</p> <p>The planning pathway should clarify whether all or only part of the site i.e., the western lot, would be subject to a planning proposal.</p>
Site 4. Forest Way, Belrose		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Further investigation ▪ Planning proposal 	No additional comments
Site 5. Corymbia Circuit, Oxford Falls		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Further investigation 	No additional comments

	<ul style="list-style-type: none"> ▪ Planning proposal 	
Site 6. Paxton Street, Frenchs Forest		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Further investigation ▪ Planning proposal 	The Assessment notes that part of the site is zoned R2 – Low Density Residential. Table 3 identifies the planning pathway as ‘Planning proposal’ however, this should be ‘Development Application’.
Site 9. Ralston Avenue, Belrose		
	<ul style="list-style-type: none"> ▪ Inclusion in AL SEPP ▪ Further investigation ▪ Planning proposal 	It is noted that the ‘Biodiversity – Flora’ assessment includes consideration for the site’s biodiversity stewardship potential. It is suggested that the conservation footprint be illustrated in green in Figure 86.
Priority: Long Term potential		
Site 3. Corner Forest Way and Madang Road, Belrose		
	<ul style="list-style-type: none"> ▪ Further investigation ▪ Planning proposal 	The Assessment notes that given the significant constraints topographical, ecological and bushfire constraints of the site, there may be merit to retain the site for 'Potential Biodiversity Credits or Offsets. On this basis a formal planning proposal process as identified in Section 4.3 and in Table 3 may not be required for an appropriate zone to be identified and implemented.
Site 7. Paxton Street, Poulton Parade and Weardon Road, Frenchs Forest		
	<ul style="list-style-type: none"> ▪ Further investigation ▪ Planning proposal 	No additional comments
Site 8. Cromer/Oxford Falls		
	<ul style="list-style-type: none"> ▪ Further investigation ▪ Planning proposal 	The Assessment notes that given the significant constraints topographical, ecological and bushfire constraints of the site, there is merit in retaining the site for biodiversity credit purposes. On this basis a formal planning proposal process as identified in Section 4.3 and in Table 3 may not be required for an appropriate zone to be identified and implemented.

Of note the quality of imagery throughout the document is poor. It is important that the maps and plans when reproduced in a report format, are legible. In addition, a number of minor non-material errors are listed in Appendix A.

5 Conclusion

The Strategic Assessment prepared by Gyde Consulting and its associates in relation to MLALC land within the Northern Beaches LGA has been reviewed against the matters required to be addressed in the Aboriginal Land Planning Framework, in the formulation DDP.

The Review indicates that the Strategic Assessment appropriately addresses the requirements of the Framework, and could be used as the basis for the preparation of a DDP, in accordance with its findings and recommendations.

The Review has also identified that the Strategic Assessment provides adequate data and information to identify appropriate land for development, and then inform, assess and determine the types of activities proposed to be carried out on identified land.

It is evident that for some sites, the extent of analysis together with previous studies and investigations has provided for a finer grained assessment of development potential, which could progress to a planning proposal in the short term.

6 Recommendation

The Strategic Assessment prepared by Gyde Consulting and its associates, in relation to MLALC land within the Northern Beaches LGA, be finalised, having regard to the suggestions and additional comments in Tables 1 and 2, and Appendix A.

Appendix A

Table 3 Table of minor errors and corrections

Document Reference	Corrections
Pp 7, second paragraph	incorrect acronym – ‘ARLA’ should be ‘ALR Act’
Pp 25, Site 6	Planning pathway should be ‘Development Application’ not ‘Planning proposal’ consistent with the 4.5 Site Summary
Appendices	
Site 2, p. 37	<ul style="list-style-type: none"> ▪ Consolidate correct text in single cell for ‘potential land use’. ▪ Insert missing ‘Planning pathway’ and ‘Priority’ text.
Site 3, p. 43	Correct ‘Legal description’ cell text to “Lot 2876 of DP 1052339”
Site 3, p.44	<ul style="list-style-type: none"> ▪ Consolidate Legal description into one cell ▪ Area data missing ▪ Consolidate Category 1, Category 2 and Category 3 permissible uses in single cell for ‘Permissible uses’. ▪ Consolidate correct text in single cell for ‘Key development controls’. ▪ Insert missing ‘Potential land use’, ‘Planning pathway’ and ‘Priority’ text.
Site 4, p. 51	<ul style="list-style-type: none"> ▪ Consolidate Category 1, Category 2 and Category 3 permissible uses in single cell for ‘Permissible uses’. ▪ Consolidate correct text in single cell for ‘Key development controls’. ▪ Insert missing ‘Potential land use’, ‘Planning pathway’ and ‘Priority’ text.
Site 4, p. 52	For consistency insert Northern Beaches Local Strategic Planning Statement – Towards 2040, Action 4.7 under ‘Strategic Planning Framework’.
Site 5, p.58	<ul style="list-style-type: none"> ▪ Consolidate Category 1, Category 2 and Category 3 permissible uses in single cell for ‘Permissible uses’. ▪ Consolidate correct text in single cell for ‘Key development controls’. ▪ Insert missing ‘Potential land use’, ‘Planning pathway’ and ‘Priority’ text.
Site 6, p. 65	Correct ‘Legal description’ cell text to “Lot 2828 of DP1002480”.
Site 9, p. 90	For consistency insert Northern Beaches Local Strategic Planning Statement – Towards 2040, Action 4.7 under ‘Strategic Planning Framework’.