

# **CONSIDERATION OF SUBMISSIONS - PLANNING PROPOSAL FOR AREAS DEFERRED FROM THE KLEP 2015**

## **EXECUTIVE SUMMARY**

### **PURPOSE OF REPORT:**

For Council to consider the submissions received in response to the exhibition of the Planning Proposal for areas deferred from the KLEP 2015.

### **BACKGROUND:**

On 8 December 2015 Council resolved to forward the planning proposal to the Department of Planning and Environment for a Gateway Determination.

A Gateway Determination was received on 27 June 2016. The Gateway Determination contained conditions which required Council to undertake further consultation with the NSW RFS and Police, and make amendments to the Planning Proposal prior to public exhibition taking place.

### **COMMENTS:**

The Planning Proposal was placed on public exhibition from the 17 November 2016 to 16 December 2016. The submissions received have been assessed for Council's consideration.

### **RECOMMENDATION:**

That Council adopts the Planning Proposal and requests the Greater Sydney Commission make the plan.

## PURPOSE OF REPORT

For Council to consider the submissions received in response to the exhibition of the Planning Proposal for areas deferred from the KLEP 2015.

## BACKGROUND

On 26 November 2013, in considering a report on the submissions made in response to the public exhibition of the Draft KLEP 2013, Council resolved, in part:

- B. That Council request the Minister, under S59(4) of the EP&A Act, defer the inclusion of the 13 areas identified on the maps at Attachment A14 and that Council resolve to prepare a planning proposal in accordance with section 55 of the EP&A Act to re-exhibit these areas within the proposed zoning outlined in the body of this report. This planning proposal then be forwarded to the DoPI for a Gateway Determination in accordance with the provision of the EP&A Act and Regulations.*

As a result of the resolution of 26 November 2013, the 13 areas were deferred from inclusion within the Ku-ring-gai Local Environmental Plan 2015 when it came into effect in April 2015. As the deferred areas were not included in this plan, the zoning and development standards applying to properties in these areas is under the Ku-ring-gai Planning Scheme Ordinance.

A Planning Proposal was prepared in accordance with Resolution B (above) to include the 13 deferred areas into the KLEP 2015 with appropriate zoning and development standards recognising the high bushfire evacuation risks within these areas.

The Planning Proposal is based on the recommendations contained within the background study *Managing Bushfire Risk Now and Into the Future* (March 2012 KMC). In assessing bushfire evacuation risks, the background study referenced research undertaken by Cova – *Public Safety in the Urban Wildland Interface: Should Fire Prone Communities Have a Maximum Occupancy?* (2005). This research recommends a maximum number of dwellings within a catchment area based on the number of exit roads.

The planning proposal has applied the E4 Environmental Living zone to properties that are:

- located within evacuation risk zones on "Bushfire Prone Land Map and Bushfire Evacuation Risk Map" (SEPP 5 Exclusion Areas – shown by the blue cross hatching); AND
- do not meet exit criteria as specified by Cova (2005).

The use of the E4 zone is a planning measure to prohibit land uses that are incompatible with the evacuation risk from these areas during bushfire. These land uses include child care centres, group homes and respite day care centres – as these forms of development provide for people who are particularly vulnerable during a bushfire and increase evacuation risks in the event of bushfire. The RFS has noted that occupants of these types of developments are highly vulnerable to the effects of a bushfire, are difficult to evacuate, and are more susceptible to smoke impacts, resulting in additional demands on emergency services, particularly if evacuation is required.

The E4 zone is also a way to prevent an increase in residential density through limiting further subdivision within these areas, and thus not increasing the amount of people or cars trying to evacuate from an area.

On 8 December 2015 Council considered a report on the preparation of the planning proposal, and resolved:

- A. *That the Planning Proposal be forwarded to the Department of Planning and Environment for a Gateway Determination in accordance with the provisions of the EP&A Act and Regulations.*
- B. *That delegation be granted to the General Manager to make any necessary corrections and amendments for drafting inconsistencies, or minor amendments as necessary to ensure consistency with NSW Standard Order Template and Department of Planning & Environment Policy.*
- C. *That Council request the plan making delegation under Section 23 of the EP&A Act for this Planning Proposal.*
- D. *That upon receipt of a Gateway Determination, the exhibition and consultation process is carried out in accordance with the requirements of the EP&A Act and with the Gateway Determination requirements.*
- E. *That a report be brought back to Council at the conclusion of the exhibition period.*
- F. *That Council wait for the NSW Rural Fire Service evacuation risk modelling study to be completed prior to further investigating a planning response for the whole of the South Turramurra area with the aim of addressing bushfire issues.*

## **Gateway Determination**

The Planning Proposal was sent to the Department of Planning and Environment for a Gateway Determination on 10 December 2015. The Department of Planning and Environment issued a Gateway Determination on 27 June 2016. **(Attachment A1).**

The Gateway Determination contained a number of conditions which required Council to make amendments to the planning proposal and undertake further consultation with the RFS and Police prior to public exhibition, as follows:

1. *Prior to exhibition, the Council is to consult with the Rural Fire Service to determine a suitable provision that limits the size, or number of rooms/occupants, of any eco-tourist facility at 20 Kanowar Avenue, East Killara, in view of the site's location in a high bushfire prone area. The agreed provision and amended planning proposal is to be submitted to the Department's regional team for review and approval, prior to proceeding with exhibition*
2. *Prior to exhibition, Council is to amend the planning proposal as follows:*
  - (a) *on page 1 of the planning proposal remove the words 'excavation' and insert 'evacuation', where appropriate*
  - (b) *Under Part 2 "Explanation of Provisions" include lots/addresses of land that have an alternative zoning to the proposed E4 Environmental Living. Especially lands proposed as zones RE1 Public Recreation and E2 Environmental Conservation in Areas 3, 5, 7, 8, 11 and 12.*
  - (c) *Under Part 3 "Justification", address consistency with S117 Direction 2.3 Heritage Conservation*
  - (d) *Under Part 4 "Mapping", for Area 12 East Killara, the site zoned SP2 Infrastructure should be labelled 'SP2 Water Supply System'*
  - (e) *Under Part 4 "Mapping", all heritage items are to include heritage item label and numbers*
  - (f) *Address S117 Direction 6.2 Reserving Land for Public Purposes, by identifying all land subject to this direction within the planning proposal and describing the reason for*

*the removal/alteration of the zone/reservation. Note: Where necessary, Council is to obtain approval(s) to satisfy the Direction prior to finalisation of the plan*  
(g) *Include a table comparing the land use table of the E4 Environmental Living, E3 Environmental Management and R2 Low Density zones.*

*3. In accordance with S117 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the NSW Rural Fire Service prior to exhibition. In addition, prior to Council commencing community consultation, Council is to consult with the NSW Police Force and provide copies of any advice provided by both these agencies to the Director of the Department's Sydney West Office for information purposes.*

In accordance with Condition 1, Council consulted with the NSW RFS and following their advice dated 17 October 2016 (Appendix G of planning proposal) Council amended the Planning Proposal to incorporate the following provision to limit the potential maximum number of people at any future eco-tourist facility at 20 Kanowar Avenue, East Killara:

***Use of certain land at 20 Kanowar Avenue, East Killara***

- (1) The clause applies to land at 20 Kanowar Avenue, East Killara, being Lot 100 DP1176072*
- (2) Development for the purpose of "eco-tourist facility" is permitted with development consent.*
- (3) Development for the purpose permitted in subclause (2), the overall accommodation for tourists must not exceed a maximum of 12 persons.*

The Planning Proposal was also amended in accordance with Condition 2.

In accordance with Condition 3, Council consulted with the NSW Rural Fire Service and NSW Police. The responses from both agencies were included at Appendix G of the planning proposal and were forwarded to the Department of Planning and Environment for information purposes.

The revised Planning Proposal was sent to the Department of Planning and Environment for approval for public exhibition on 19 October 2016. A letter of approval (**Attachment A1**) was received on 1 November 2016 which outlined that Council had complied with Conditions 1, 2 and 3 and that the Planning Proposal was suitable to proceed to exhibition.

**Public Exhibition**

The planning proposal was placed on public exhibition from 17 November 2016 – 16 December 2016. The exhibition material included the Planning Proposal (see **Attachment A2**) and the following appendices:

- Appendix A – *Managing Bushfire Risk, Now and Into the Future* (**Attachment A3**);
- Appendix B – Biodiversity Report 20 Kanowar Avenue, East Killara;
- Appendix C – Comments from RFS and NSW Police;
- Appendix D – Council Report and Resolution 8 December 2015;
- Appendix E – Comparison Table R2, E3 and E4;
- Appendix F – Biodiversity Site Condition Report 56-58 Koola Avenue, East Killara; and
- Appendix G – Pre-exhibition advice from RFS and Police (**Attachment A4**).

**COMMENTS**

**State Agency Consultation**

The Gateway Determination required consultation with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage;
- Department of Education and Communities;
- Roads and Maritime Services;
- Department of Health;
- Fire and Rescue NSW;
- NSW Police Force;
- NSW Rural Fire Service;
- State Emergency Service;
- Ambulance Service of NSW;
- Sydney Water.

Responses were received from Office of Environment and Heritage, Department of Education and Communities, Roads and Maritime Services, Fire and Rescue NSW, NSW Police Force and NSW Rural Fire Service. Copies of the responses are included at **Attachment A5**.

### ***Office of Environment and Heritage***

Office of Environment and Heritage Greater Sydney Planning Team had no comments on the Planning Proposal.

### ***Department of Education and Communities***

**North Turramurra Public School** - located in Area 1 North Turramurra. Proposed to be zoned SP2 – Infrastructure (Educational Establishment), requests that the zoning of the school be amended to E4 Environmental Living in line with PN 10-001. E4 zone is a prescribed zone under the Infrastructure SEPP which allows Educational Establishments as permissible development, development without consent and exempt and complying development to apply.

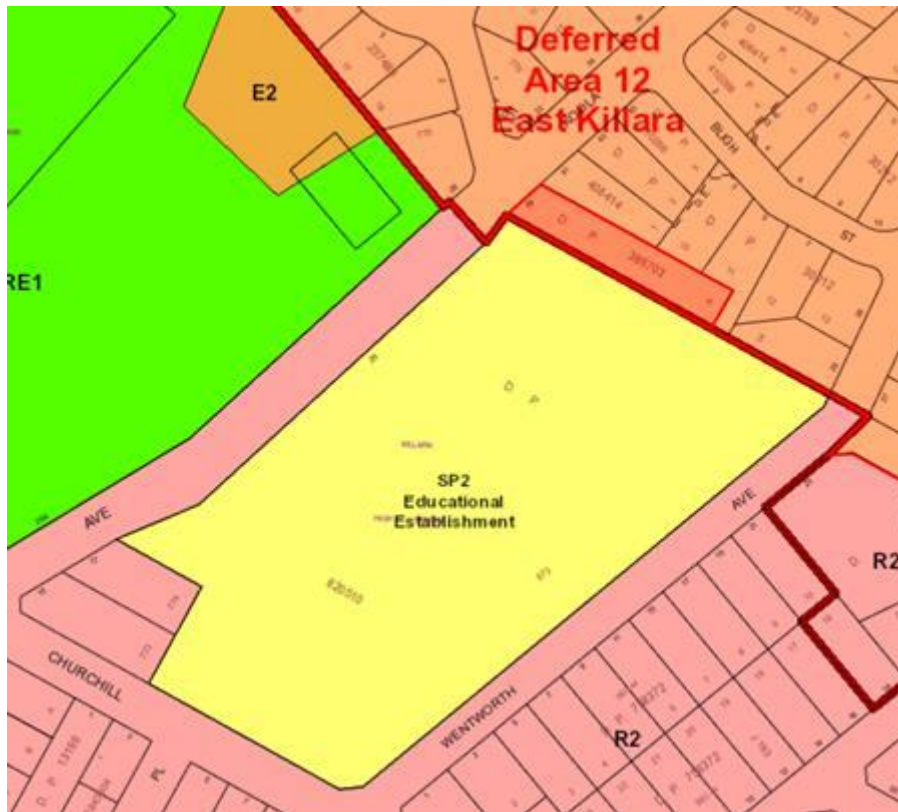
**Killara High School** – Two lots at the south-western extent of the school site are currently zoned R2 (Lots 773 and 774 DP752031). Part of the site (Lot A DP386703 Note: correspondence from Department of Education originally referred to Lot 873 DP820510 but this was later clarified to Lot A DP386703) is within Area 12 East Killara and is proposed to be zoned E4. The majority of the school site currently zoned SP2 Infrastructure (Educational Establishment). Requests that the whole of the school site be zoned R2.

**Comment:** The Department of Planning and Environment's Practice Note *Zoning for Infrastructure in LEPs (PN 10-001)* outlines that where the infrastructure type is only permitted in certain prescribed zones (such as educational establishments), existing 'special use' zones should be rezoned the same as the adjacent land if the zoning is a prescribed zone.

During the preparation of the KLEP (Local Centres) 2012 and KLEP 2015 Ku-ring-gai Council sought and received a special dispensation from the Department of Planning to zone school sites SP2 Infrastructure. The justification for this was that educational establishments form a core portion of Ku-ring-gai's employment sector, and this zoning would give Council and the school establishment certainty regarding the preservation of existing school uses on their land well into the future. Many other councils have also taken this approach in their standard instrument LEPs.

With regards to Killara High School, the majority of the school site is located outside of the East Killara deferred area, and is currently zoned SP2 'Educational Establishment' under the KLEP 2015. The only part of the school site (Lot A DP386703 – shown highlighted in red in the map excerpt below) that is located within the deferred areas was exhibited with an E4 zoning. The Department of Education has requested that the whole of the school site be zoned R2 Low Density Residential. This planning proposal only applies to the deferred areas, and therefore Council cannot review the zoning of any lots outside. Having regard for the existing SP2 zoning on the majority of the school site, it is recommended that Lot A DP386703 (shown highlighted in red

below) be amended to SP2 Educational Establishment zoning, consistent with the zoning of other school sites within the LGA.



Map excerpt – Killara High School

The two lots (Lots 773 and 774 DP752031) at the south-western extent of the school that are currently zoned R2 are outside the boundary of the East Killara deferred area. The zoning of these sites may be reviewed during a future LEP so that they are consistent with the SP2 Educational Establishment zoning of the rest of the school site, and consistent with the zoning applied to other schools in the LGA.

With regards to North Turramurra Public School, the Department of Education has requested the site be zoned E4. It is recommended that the zoning be retained as SP2 Infrastructure Educational Establishments (as exhibited), consistent with the zoning of other Schools within Ku-ring-gai.

## Roads and Maritime Services

**RMS Submission 1 February 2017** - No objections to Planning Proposal. Attached Property Information Management Scheme Plans which show road widening reservations to be included in Areas 2, 5, 9 and 10.

**Comment:** The road widening reservations referred to in Areas 5, 9, and 10 of the RMS submission (shown by blue diagonal hatching) formed part of the former B2/B3 County Road Reservation which has been abandoned and effectively replaced by the NorthConnex. Parts of this former road corridor have also been rezoned under the Ku-ring-gai LEP 201. The rezoning of the section of corridor between The Comenarra Parkway, Wahroonga and Kissing Point Road, South Turramurra was initiated in 2003 by the NSW Department of Infrastructure Planning and Natural Resources and NSW Roads and Traffic Authority.

Council sent the RMS the information regarding Ku-ring-gai LEP 201 (including maps, and correspondence with the RTA) and the rezoning submission and requested that the RMS review the

information and submit a revised response to the planning proposal, particularly in relation to the road widening reservations.

**RMS Submission 24 March 2017** – As requested by Council, RMS has reviewed the status of the lands shaded white with blue hatching and confirms that the subject land has been sold by RMS over the years. They have been retained in the PIMS plans for historical purposes only. RMS apologises for the confusion and inconvenience the previous advice may have caused. Council is reminded that the lands along Kissing Point Road shown in grey and yellow shading are still affected by an existing road widening scheme.

**Comment:** The revised RMS submission draws Council's attention to certain lands along Kissing Point Road in South Turrumurra that RMS claims are still affected by an existing road widening scheme.

Although the majority of these lands lie outside the deferred areas, the advice from RMS is not consistent with Council's records and the Ku-ring-gai LEP (2015) which show that road widening reservations affecting these lands were removed following s56 state agency consultation (in 2012) for the Ku-ring-gai LEP (2015). As part of the state agency consultation, Council submitted draft Ku-ring-gai LEP maps for RMS comment and the RMS response requested the retention of certain road reservations elsewhere in the Ku-ring-gai area, but did not comment on or request the retention of the above road reservations along or near Kissing Point Road.

Staff have responded to RMS drawing its attention to the s56 state agency consultation undertaken in 2012 for the Ku-ring-gai LEP, and have requested RMS review their response in light of this information. If a further response or clarification is received from RMS prior to consideration of this matter by Council, it will be circulated separately before the meeting.

Notwithstanding the above RMS mapping inconsistencies, RMS did not raise any objections to the Planning Proposal for the Deferred Areas

## **Fire and Rescue NSW**

Submissions outlines that the correct agency to respond to request for comment is the Rural Fire Service and provided details for the Executive Officer for the Hornsby Bushfire Management Committee.

**Comment:** Council has already separately consulted with the RFS Assessment and Planning Team (see below). As per the request from Fire and Rescue, the Planning Proposal was sent to the Executive Officer for the Hornsby Bushfire Management Committee for comment on 5 December 2016. No response has been received.

## **NSW Police**

Submission notes that Council has had consultation with NSW Rural Fire Service, who have the primary responsibility for the management of fire that may occur within the defined areas. Notes that access to these areas is confined to one or two streets and agrees that funnelled evacuation has some risk.

The NSW Police Force role in emergencies is governed by the *State Emergency and Rescue Management Act 1989* and the *Essential Services Act 1988*. Police have a primary role in evacuations should an emergency be declared.

Submission suggests that Council considered the use of available land, the number of occupants, motor vehicles and house additions that are approved so not to impact adversely on the safety of the affected population.

**Comment:** The application of the E4 zone to these areas is a way to prohibit incompatible land uses and limit further residential density so as to not adversely impact of the safe evacuation of the population from these areas in the event of bushfire.

## **NSW Rural Fire Service**

Response notes that high density developments present unique challenges in relation to the existing infrastructure and often result in an increased demand on existing services and may result in an increased risk to occupants and the existing community during a bushfire event.

The response attached NSW RFS Fact Sheet 4/12 *Increased Density on a Single Parcel of Land* – which outlines the NSW RFS's position on the assessment of dual occupancy, multi dwelling house, secondary dwellings (including detached granny flats) and boarding houses that increase density on a parcel of bushfire prone land. These developments are required to be exposed to no greater than 29kW/m<sup>2</sup> radiant heat exposure and meet the provisions of Section 4.1.3 of Planning for Bushfire Protection with regard to access and provision of services. The response notes that some of the sites may not be able to achieve the maximum radiant heat exposure and therefore would not be permissible under the provisions of Planning for Bushfire Protection. The response also notes that access provisions may not comply due to existing infrastructure constraints. The response notes that in this regard, Ku-ring-gai Council's study *Managing Bushfire Risk Now and Into the Future* and the Cova 2005 research recommends maximum numbers of households to minimum number of exits. Council should ensure that the potential increase in density within areas affected is suitable in this context.

The response also notes that experience has shown that occupants of Special Fire Purpose Developments are highly vulnerable to the effects of a bush fire. Residents are difficult to evacuate and more susceptible to smoke impacts, resulting in additional demands on emergency services, particularly if evacuation is required. Given the limited access and egress paths to the affected areas and proximity to unmanaged vegetation, it is considered that some of the sites identified may not be suitable for such uses.

With regard to 20 Kanowar Avenue, East Killara, the response notes that the site is rated as an extreme risk in the Hornsby/Ku-ring-gai Bush Fire Risk Management Plan (2010). Concern is raised with the proposal to have short stay accommodation on the site given the probable transient nature of visitors to such sites who may not have an appreciation for the risks to the site. Section 4.2.7 of Planning for Bushfire Protection identifies that the acceptable solution for eco-tourism developments is for the overall accommodation for tourists not exceed 12 persons. The performance criteria does not specify a maximum occupancy for sites, but that "*suitable refuge areas and evacuation/management arrangements are in place commensurate with the bushfire risk*"

**Comment:** Within the E4 zone secondary dwellings are a development type that is permissible with consent. The advice from the RFS is noted that some sites within these areas may not be able to achieve the maximum radiant heat exposure provisions under Planning for Bushfire Protection and therefore would not be permissible. This is a matter that would be assessed during the development application process.

The Planning Proposal and application of the E4 zone is a planning measure to ensure that development types that cater to vulnerable groups, and further increases in residential density do not occur in these areas of evacuation risk. The advice from the RFS is noted that occupants of Special Fire Purpose Developments (such as child care centres) are difficult to evacuate and are more susceptible to smoke impacts resulting in additional demands on emergency services, particularly if evacuation is required. It is for this reason that Council is proposing the E4 zone, as it prohibits these types of developments.



The advice from the RFS and Section 4.2.7 of Planning for Bushfire Protection is noted, and the planning proposal has included a provision to limit any accommodation for an eco-tourist facility at 20 Kanowar Avenue, East Killara to not exceed 12 persons.

## **Community Submissions**

A total of 145 submissions were received from the community in response to the planning proposal – this included submissions and general enquires/questions which were answered during the exhibition period. Submissions were received both in support and in objection to the planning proposal.

### ***Matters raised in submissions***

A summary table has been prepared which categorises the submissions received by theme. The summary table also provides comments in response to the matters raised. The summary table is included at **Attachment A6**.

The following are some of the key themes and matters raised in the submissions and Council comment on those matters:

- *Area hasn't had a bushfire in x amount of years, in previous bushfires no houses were lost or evacuation was not required.*

**Comment:** The E4 zone was not applied on the basis of historical bushfires or past evacuations. Just because a bushfire has not been through an area in a given period, does not mean it will not in the future. As explained in *Managing Bushfire Risk, Now and Into the Future*, historical patterns of bushfire cannot be relied upon for the future because of the changing climate.

Some fires are so severe that evacuation is the only reasonable option. The severity of some recent fires has led to a new categorization of bushfires that now includes 'catastrophic'. For such events, it is critical that safe evacuation is possible.

- *E4 zoning will not reduce bushfire risk or evacuation risk*

**Comment:** The E4 zone is not proposed to reduce risk of bushfire, but to ensure that the risk during an evacuation because of bushfire is not increased.

Zoning is how councils control land use and set out the development types that are permitted and are prohibited. The use of the E4 zone is how Council can prohibit land uses that are incompatible with the evacuation risk during bushfire – such as child care centres, group homes and respite day care centres – as these forms of development provide for people who are particularly vulnerable during a bushfire and increase evacuation risks in the event of bushfire. The RFS has noted that occupants of these types of developments are highly vulnerable to the effects of a bushfire and are difficult to evacuate, and are more susceptible to smoke impacts, resulting in additional demands on emergency services, particularly if evacuation is required.

The E4 zone is also a way to prevent increase in residential density through limiting further subdivision within these areas, and thus not increasing the amount of people or cars trying to evacuate from an area.

The NSW Rural Fire Service Community Resilience Practice Note 2/12 outlines that LEPs can ensure that bushfire management principles are considered at all stages of the planning and development process. Early on in the strategic planning process (e.g. when considering land use zoning for an area) consideration should be given to limiting or excluding incompatible development in bush fire affected areas commensurate with the level of risk. The practice notes outlines that “*It may be appropriate to apply zones that limit or exclude incompatible development*

*in bushfire affected areas where development is likely to be difficult to evacuate during a bush fire.”*

- *E4 zoning will result in additional expenses for residents building or renovating homes*

**Comment:** The E4 zoning does not affect the bushfire risk of any land. Bushfire Risk is assessed and determined under the *Rural Fires Act 1997* and identified on the Bushfire Prone Land Map. The zoning of a site under an LEP does not override or affect the application of the provisions of the *Rural Fires Act 1997*. The E4 zone does not place any more onerous requirements for residential development such as location, design, construction or materials than already required under Planning for *Bushfire Protection 2006* in any other zone.

- *Do not support Secondary Dwellings as a permissible development type within East Killara. Area should be zoned E3 not E4. Secondary dwellings will increase density and population and lead to increased traffic and congestion in the event of evacuation.*

**Comment:** In assessing the submissions received from the exhibition of the Draft KLEP 2013, Council undertook further consultation with the RFS and Police. In regard to secondary dwelling, it was the view of these emergency services that they do not pose as great a risk as Special Fire Protection Purpose (SFPP) developments (e.g. child care centres).

Secondary dwellings are a land use that is permissible with consent within the E4 zone, which means approval of Secondary Dwellings is required to go through a development application process. There is no pathway for Secondary Dwellings to be approved via complying development on land zoned E4.

It is important to note that secondary dwellings are *not* the same as a dual occupancy (either attached or detached). Secondary dwellings are limited in size, and have to be used in conjunction with the principal dwelling on the lot – they are unable to be subdivided like a dual occupancy.

The KLEP 2015 definition of ‘secondary dwelling’ means *‘a self-contained dwelling that:*

- (a) Is established in conjunction with another dwelling (the principle dwelling), and*
- (b) Is on the same lot of land as the principle dwelling, and*
- (c) Is located within, or is attached to, or is separate from, the principle dwelling*

**Note. See clause 5.4 for controls relating to the total floor area of secondary dwellings**

The combined total floor space ratio of a principle dwelling and a secondary dwelling cannot exceed the maximum floor space ratio allowed on the site for a single dwelling house. Secondary dwellings contribute to the overall FSR of a site and therefore do not contribute to an increase of density.

The permissibility of secondary dwellings within the E4 zone will not result in significant increases in residential housing or density. It is unlikely that all properties within the East Killara area will be able to develop a secondary dwelling, due to factors such as not being able to meet the requirements under *Planning for Bushfire Protection 2006*, not being able to comply with the FSR requirements under the KLEP 2015, property constraints and personal choice whether the residents wish to develop a secondary dwelling.

Those properties that can and do develop secondary dwellings, Clause 5.4 (9) of the KLEP 2015 limits the size of secondary dwellings to 60sqm or 25% of the total floor area of the principal dwelling (whichever is greater). The controls at Part 5 of the DCP limit secondary dwellings to a maximum of 2 bedrooms.

Secondary dwellings cater for changing population demographics, particularly extended families, ageing parents and older children remaining at home.

The census data shows that the average household size within Ku-ring-gai has been decreasing, from an average household size of 2.90 in 2006 to 2.88 in 2011. The table below shows the changes in average household size across Ku-ring-gai and within the deferred areas between 2006 and 2011. It is anticipated that this trend will be reinforced with the release of the 2016 census data in June 2017

Area	Average household size (persons per dwelling)	
	2006	2011
Ku-ring-gai LGA	2.90	2.88
East Killara	3.14	3.09
North Turramurra	2.55	2.52
North Wahroonga	3.11	2.99
St Ives Chase	3.10	3.08

The most dominant household size within Ku-ring-gai is a 2 person household. The Department of Planning and Environment has also predicted that lone person households are likely to be the fastest growing in the years between 2011 – 2031 within the Northern District.

Any secondary dwelling located on bushfire prone land would need to be constructed to comply with the requirements of Planning for Bushfire Protection. The advice from the RFS dated 17 October 2016 notes that some properties may not be able to achieve the requirements such as maximum radiant heat exposure, and would therefore not be permissible under the provisions of Planning for Bushfire Protection.

- *Have direct access to main road – can evacuate in a few minutes*

**Comment:** A single resident may be able to exit a high bushfire evacuation risk area in a number of minutes in normal conditions, however, in hazardous conditions such as major bushfire events, experiences have shown that conditions are smoky, windy, hot and dark. In these conditions streets can become clogged and chaotic as many residents try to evacuate at once, emergency services try to access around parked cars, fallen trees, which creates blocks and increases the risks. Areas around hospitals, such as the SAN, are critical for access purposes during emergencies.

- *Council should undertake back burning or provide additional exit roads instead of E4 zoning*

**Comment:** Bush fire mitigation and protection measures fall into three broad categories: planning controls, vegetation controls and preparedness. Council employs all these methods in bush fire risk management.

There are numerous levels of bushfire mitigation / protection measures used by Council and other fire management agencies.

Regional bush fire management is directed by the Hornsby Ku-ring-gai Bush Fire Management Committee. Treatments to reduce the risk of bush fire to existing assets include: Asset Protection Zones (fuel reduced areas), education, hazard reduction burns and assistance with emergency management planning.

These on ground bushfire mitigation measures do not completely eliminate bush fire risk and do not address evacuation risk or negate the requirement to be prepared for evacuation. Additionally, hazard reduction burning and vegetation clearing may be inappropriate in a given area for many reasons, including but not limited to; legally enforced minimum fire intervals, inaccessible terrain,

proximity to waterways, the presence of threatened or fire-sensitive species or ecological communities or because greater property protection outcomes can be achieved by directing resources elsewhere.

An additional level of bushfire mitigation is provided through planning controls which require all developments on land that is designated as bush fire prone to consider bush fire and meet the requirements of *Planning for Bush Fire Protection 2006* and AS3959 – 2009.

Whilst these planning controls do consider access and egress as well as emergency management arrangements, they do so on a development by development basis. Thus reducing the ability to account or predict potential cumulative impact from increased development.

The zoning restrictions contained within the planning proposal allow for a strategic review of potential occupancy numbers and evacuation constraints. This complements other protection measures by minimising the potential for future evacuation risks.

The Planning Proposal has no impact on the planning or carrying out of works to reduce bush fire hazards and does not absolve Council of their statutory duty to prevent bush fires.

Areas where additional roads can be built are restricted by the landscape, surrounding development and funding. Creating new roads through bushland will not necessarily negate the risks unless large tracks of open space are maintained either side. It is unlikely that additional roads can be provided from these areas.

- *E4 zoning will result in increased insurance premiums*

**Comment:** There is no evidence to suggest that the E4 zoning will result in increased insurance premiums. Zoning does not affect the bushfire risk of any land. Bushfire risk is assessed as determined under the *Rural Fires Act 1997* and identified on the Bushfire Prone Land Map. Zoning controls land use and does not identify a property as being bushfire prone or bushfire evacuation risk. Council has used the E4 zone within other areas of the local government area for sites that have significant biodiversity features, so in this regard, the E4 zoning does not denote a property as bushfire evacuation risk.

- *Did not receive notification and request for public meeting*

**Comment:** Council has conducted the public exhibition and notification in accordance with the EP&A Act 1979, Regulations and Gateway Determination. Notification letters were sent to all the properties affected by this planning proposal, and advertisements were placed in the North Shore Times. All documentation was available on Council's website and in hard copy at Customer Service.

It is not considered that the issues raised in the submissions warrant the requirement for a public hearing under s57(5) of the EP&A Act 1979.

### ***Pro-Forma Letter***

A pro-forma letter was circulated to properties in Area 5 Fox Valley/Browns Road/Jordan Avenue and Area 6 Howson Avenue. As a result of this circulation, over 50 submissions (nearly 1/3 of all the submissions) were received which either attached the circulated pro-forma letter or replicated the same information and issues contained within the pro-forma letter. It is apparent these submissions have been based on the content of the letter, and not the Planning Proposal or exhibition material provided by Council.

The following is a summary of the main issues raised in the pro-forma letter and Council's comment:

- *Negatively impact property value*

**Comment:** It is acknowledged that there are some differences in the permitted land uses (i.e. E4 does not permit child care centres, group homes, respite day care centres, places of public worship or neighbourhood shops) and higher minimum lot size standards for subdivision. However, the development potential of the vast majority of properties will not be affected.

It is unlikely that there will be any significant effect to the value or resale potential of land zoned E4 Environmental Living. The E4 zone provides for low density residential, with the main permitted use is “Dwelling house” – which is the same as the R2 Low Density Residential zone.

- *Extra development constraints will limit options to renovate*

**Comment:** The E4 zone does not affect the bushfire risk of any land. Bushfire risk is assessed as determined under the *Rural Fires Act 1997* and identified on the Bushfire Prone Land Map. The zoning of a site in an LEP does not override or affect the application of the provisions of the *Rural Fires Act 1997*. The E4 Environmental Living zone does not place any more onerous requirement for residential development such as location, design, construction and materials than already required under *Planning for Bushfire Protection 2006* in any other zone.

The maximum height of buildings development standard applying to land zoned E4 is 9.5m – this is the same as the maximum height of buildings development standard applying to land zoned R2.

The Floor Space Ratio map outlines a maximum FSR of 0.2:1 for land zoned E4. However, Clause 4.4(2D) of the KLEP 2015 written instrument overrides what is shown on the map, and provides a sliding scale for FSR up to 0.4:1, depending on the lot size. For most lots – this means that the maximum allowable FSR will be the same as sites zoned R2. It is only large lots (over 1500sqm) that the E4 zone will result in a reduced FSR.

The E4 zoning will not adversely impact on ability to develop or renovate properties, noting that the Height and FSR for most properties will be the same as under an R2 zoning.

The E4 zone is a low density residential zone, with the main permitted uses being dwelling houses and secondary dwellings – the same as the R2 zone.

- *Bushfire Evacuation Risk is a measure concocted by Ku-ring-gai Council – no other Councils or government organisations define it*

**Comment:** Bushfire Evacuation Risk is not a measure created by Ku-ring-gai Council. Other NSW State Government Organisations, including the NSW RFS and Department of Planning recognise Bushfire Evacuation Risk:

- The *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* prepared by the then Department of Planning allows for the preparation of a Bushfire Evacuation Risk Map, and sets out the matters for consideration in the preparation of the map.
- The RFS “*Guide for Bush Fire Prone Land Mapping*” Version 5b November 2015 includes the definition for “Bushfire Evacuation Risk Map” as “*A map developed by Council in consultation with the NSW RFS which identifies land that is susceptible to evacuation difficulties in the event of bushfire. Special Fire Protection Purpose developments may be deemed inappropriate for these areas and may be prohibited. The map will identify these areas via cross hatching. The Bushfire Evacuation Risk Map is held by the Department of Planning.*”

Ku-ring-gai Council is taking a proactive approach to risk management by using land zoning to reduce the evacuation risk from bushfire events. This risk results from development that has occurred in a number of locations where the community is surrounded by extensive areas of bushfire prone vegetation, with inadequate road networks to enable safe evacuation.

- *Bushfire Evacuation Risk Map is deliberate misrepresentation of component data – Council have overlaid the SEPP 5 Exclusion Areas on the RFS Bushfire Prone Land Map*

**Comment:** The Bushfire Evacuation Risk Map is not a misrepresentation of data. Ku-ring-gai Council's Bushfire Evacuation Risk Map was prepared under the State Environmental Planning Policy SEPP 5 (Housing for Older People or People with a Disability) in consultation with the NSW RFS and the then Department of Planning. The map identifies land that is susceptible to evacuation difficulties in the event of a bushfire. Accordingly, due to the evacuation difficulties these areas are not appropriate for the development of housing for seniors or people with a disability. These areas are shown on the map by the blue cross hatching. The Bushfire Evacuation Risk Map is held by the Department of Planning and Environment.

Ku-ring-gai Council has commonly published the Evacuation Risk Map and Bushfire Prone Land Map together.

- *Justification is inadequate – The Background Study 'Managing Bushfire Risk Now and Into the Future' draws conclusions from highly speculative projected outcomes of climate change. No detailed bushfire data of specific fires which have affected Ku-ring-gai area provided or any details of past evacuations. References in document to fires in VIC, Canberra and Blue Mountains are not relevant to Lane Cove National Park. Document has no author and no-one with professional expertise in bushfire research or emergency evacuation was used for research.*

**Comment:** *Managing Bushfire Risk Now and Into the Future* was prepared by Ku-ring-gai Council staff from with expertise in urban planning, bushfire and natural areas management. The document was prepared to guide the preparation of the KLEP 2015. The study provides an overview of the legislation and the climatic, land-use and biophysical context of bushfire in Ku-ring-gai. The study identifies the vulnerability of Ku-ring-gai to risk from bushfire events and identifies actions to reduce bushfire risk, with a focus on options for land use planning.

The NSW RFS made comments on the draft study in May 2011 which outlined:

*"The Service commends Council's commitment to understanding the threat posed by bushfire in the Ku-ring-gai Local Government Area (LGA) and the preparation of realistic active and passive defensive measures for the protection of life, property and the environment.*

*The Study identified land use planning that take into account natural hazard risks including bushfires as the single most important mitigation measures for preventing future disaster losses. This is a position which the RFS strongly supports and has been actively pursuing through cooperative strategic planning and development assessment for all development on bushfire prone land or development where bushfire is considered an issue."*

The study references numerous articles, papers, studies and research from Australian professionals and scientists.

The sources of data regarding climate change and the potential shift bushfire weather that results from these changes was the work of Professor Ann Henderson-Sellers who is climate scientist with considerable experience in the International Panel on Climate Change.

Council has worked with Risk Frontiers at Macquarie University to review past fire history and consider forward projections. The report from Macquarie University titled '*Economic Evaluation Climate Change Adaptation Strategies for Local Government: Ku-ring-gai Council Case Study*' is on Council's web site.

- *The Cova report uses case studies from USA which are not comparable to local conditions within Fox Valley and Lane Cove National Park*

**Comment:** The focus of the Cova study "*Public Safety in the Urban-Wildland Interface: Should Fire-Prone Communities Have a Maximum Occupancy?*" (2005) is evacuation egress and highlights limitations in existing community egress systems by applying concepts such as maximum occupancy rates.

The Cova study includes two examples of fire prone communities in California, USA. The study states "*there are literally thousands of fire prone communities.....with a static road network and steadily increasing housing stock*". The examples in the Cova study were chosen on the basis that they are fire prone and that they have a static road network.

Local conditions such as vegetation type, climate, slope did not form part of the criteria.

In this regard, the Fox Valley area is comparable to the Cova study, and the examples uses, in that it is a fire prone community with a static road network.

- *Council justification is falsely represented as being from the RFS*

**Comment:** The Justification for the Planning Proposal does not falsely represent the proposed E4 zoning as being from the RFS. The Planning Proposal details the history of Council's planning approach for these areas as based on the background study "*Managing Bushfire Risk Now and Into the Future*". The Planning Proposal details the consultation that Council has undertaken with the RFS, Police and other emergency services. The written advice from the RFS and Police has been made publically available with the exhibition of the planning proposal.

Council has continuously consulted with the RFS and NSW Police throughout the progression of this Planning Proposal.

Council consulted with the RFS during the preparation of the background study "*Managing Bushfire Risk Now and Into the Future*", where the RFS advised "*The Study identified land use planning that take into account natural hazard risks including bushfire as the single most important mitigation measure for preventing future disaster losses. This is a position which the RFS strongly supports and has been actively pursuing through cooperative strategic planning and development assessment for all development on bushfire prone land or development where bush fire is considered an issue.*"

Council also consulted with the RFS and Police following the exhibition of the draft KLEP 2013, and following their advice, amendments were made to the methodology of applying environmental zoning for bushfire evacuation risks and change to the proposed zoning.

Council consulted with the RFS and Police, and other emergency services prior to the preparation of this Planning Proposal, and again consulted with the RFS and Police following the preparation of the Planning Proposal. The comments from the RFS and Police are included at Appendix C and G of the Planning Proposal. The comments from the Police and RFS acknowledge the risk of funneled evacuation through 1 or 2 streets and that increasing population density and certain land uses can be problematic in the event of evacuation. The comments from the RFS outline that they support the concept of planning measures to prevent increase in density and development types that increase evacuation risk.

- *Fox Valley evacuation risk is overstated, incorrectly not included all exit roads from Fox Valley Area e.g. Fox Valley Road north of The Comenarra Parkway or new SAN access road.*

**Comment:** The Fox Valley area contains three separate catchments:

- Browns Road ;
- Jordan Avenue;
- The Broadway.

These three catchments exit onto two roads – Fox Valley Road and The Comenarra Parkway. Browns Road and Jordan Avenue catchments both exit on The Comenarra Parkway. The Broadway catchment exits on Fox Valley Road. Accordingly, a maximum of two exit roads have been included in the assessment.

- *Council and RFS do not have a listed evacuation safe area for Fox Valley – conclusion is that Fox Valley is not as significant evacuation risk as areas adjoining northern and north eastern bushland*

**Comment:** Under Part 3A of the *Rural Fires Act 1997*, the RFS is the responsible agency for co-ordinating the Neighbourhood Safer Places program.

The primary purpose of a Neighbourhood Safer Place is to provide a place of last resort for a person to shelter at during the passage of the bush fire front. Neighbourhood Safer Places are not to be confused with Fire Refuges, Relief Centres, Recovery Centres, Assembly Centres, Evacuation Points or Informal Places of Shelter.

Neighbourhood Safer Places can be located within any part of the State that may be affected by bushfires, and must satisfy certain performance criteria.

The lack of a Neighbourhood Safer Place identified by the RFS within the Fox Valley area does not mean the bushfire evacuation risks for the Fox Valley area are not as significant as those areas with Neighbourhood Safer Places. The RFS Neighbourhood Safer Place Guidelines states that “*NSPs will not exist in all communities. In some instances there may not be a NSP in your local area or close to your home.*”

- *Inconsistent with South Turramurra, where only a few streets are proposed as E4 yet contains Schools and child care centres and more exposed to bushfire compared to Fox Valley where all streets are proposed as E4 yet doesn't contain schools or childcares*

**Comment:** Council's methodology in applying the E4 Environmental Living zone in response to bushfire evacuation risk is:

- properties located within evacuation risk zones on "Bushfire Prone Land Map and Bushfire Evacuation Risk Map" (blue cross hatching); AND
- do not meet exit criteria as specified by Cova (2005).

The Bushfire Evacuation Risk Area (SEPP 5 Exclusion Zone) as identified by the blue cross hatching on the Bushfire Prone Land and Bushfire Evacuation Risk Map does not extend the whole of South Turramurra up to The Comenarra Parkway, instead it only extends as far north as Chisholm Street and Havelock Street, see map below).

When Council's methodology is applied to the evacuation risk area of South Turramurra (shown with the blue cross hatching), the area satisfies the exit criteria for the number of dwellings.



No. of Exits	No. of Dwellings	Cova Recommended Max. Dwellings	No. over Cova recommended max. dwellings
4	672	601+	0

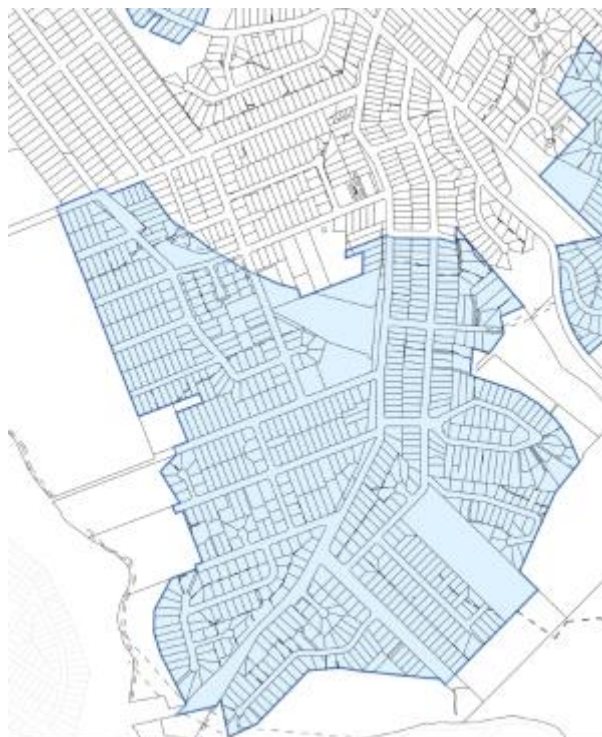


Image: Bushfire Evacuation Risk Map (SEPP 5 Exclusion Zone) – South Turramurra

- *E4 zoning is about Council saving money on Land and Environment Court cases and hazard reduction expenditure*

**Comment:** The E4 Environmental Living zone will not have any effect on the ability of applicants to lodge an appeal to the Land and Environment Court. Section 97 of the *Environmental Planning and Assessment Act 1979* sets out that if an applicant is dissatisfied with the determination of a development application, the applicant can appeal to the Land and Environment Court within 6 months. Section 97 does not limit the right to appeal to certain zones.

Bush fires are a part of the Australian environment, with NSW being one of the more bush fire prone areas in the world<sup>[1]</sup>. Ku-ring-gai as having the highest proportion of interface properties within the Sydney Metropolitan Area<sup>[2]</sup>.

As the population of Ku-ring-gai increases so does the likelihood of increased development within bushfire prone area, increasing the number of persons and property potentially affected by bush fires.

The existing nature of urban development adjacent to bushfire prone vegetation and the value of these natural areas, combined with the reality of resource availabilities means that the reality is that bushfire is a shared responsibility. With the State, municipal councils, property owners, individuals, household members and the broader community all contributing to mitigating bushfire risk. This approach is supported within numbers studies and reports, including the Victorian Bushfires Royal Commission<sup>[3]</sup>. According to the COAG (2009) National Disaster Resilience

Statement ' *Disaster resilience is the collective responsibility of all sectors of society, including all levels of government, business, the non-government sector and individuals. If all these sectors work together with a united focus and shared sense of responsibility to improve disaster resilience, they will be far more effective than the individual efforts of any one sector* '.

Section 63 of the *Rural Fires Act 1997* states that it is the duty of the owner of land, either private or public, to take all practicable steps to prevent bush fires on, and to minimise the danger of the spread of a bush fire on or from that land. The Planning Proposal has no impact on this statutory duty and does not impose additional responsibility on residents or absolve Council of their own responsibilities.

In addition to on ground bushfire mitigation works, and bushfire education, the planning proposal enables council to take a proactive approach to bushfire risk mitigation by:

- limiting or excluding incompatible development in bushfire affected areas where it is likely to be difficult to evacuate during a bushfire.
- limiting the overall number of development types or uses permissible.

Thereby reducing further risk to existing and future residents of these areas.

The Planning Proposal aims to prohibit certain types of future development and/or land use which would lead to an unacceptable increase in bush fire evacuation risk. Under s100C of the Rural Fires Act 1997 zoning *cannot prohibit, require development consent for or otherwise restrict the doing of hazard reduction works*. The Planning Proposal has no impact on the planning or carrying out of works to reduce bush fire hazards and does not absolve Council of their statutory duty to prevent bush fires.

- *Council does not need to resort to E4 zoning to apply planning restrictions. Council should add special development restrictions in bushfire zones under R2 zoning. PN 11-002 outlines that Council can prepare additional local objectives to supplement core objectives. Council could add core objective to preclude high density development and development for vulnerable people from bushfire prone land*

**Comment:** Local Environmental Plans (LEPs) guide planning for local government areas. They do this through zoning and development controls, which together provide the framework for the way land can be used.

The Land Use Table within the LEP sets out the objectives of each zone and the types of land uses that are permitted or prohibited in each zone. Under the NSW Government's standard LEP template, Council cannot permit uses in one part of an R2 zone, and prohibit them in another, no matter what objectives are included. The only way to provide for a different set of land uses is to apply a different zone.

Councils can prepare additional local objectives to supplement to core zone objectives. Ku-ring-gai Council has done this for the E4 zone and included an additional local objective " *To minimise direct and indirect risks to life, property and the environment from bushfire events* ".

The Land and Environment Court has established a planning principle on the weight to be given to the zoning in *BGP Properties Pty Limited v Lake Macquarie City Council* [2004]. The judgement outlines that:

*117 In the ordinary course, where by its zoning land has been identified as generally suitable for a particular purpose, weight must be given to that zoning in the resolution of a dispute as to the appropriate development of any site.*

*118 In most cases it can be expected that the Court will approve an application to use a site for a purpose for which it is zoned, provided of course the design of the project results in acceptable environmental impacts.*

This makes it inappropriate to zone the bushfire evacuation risk areas R2 with an objective to prohibit development for vulnerable people from bushfire prone land. The E4 zone has been applied to these areas as it allows for low density residential development – the same as within the R2 zone, but prohibits the additional uses such as child care centres which cater to vulnerable groups.

- *Council will attempt to further restrict property development rights within E4 zone*

**Comment:** Any changes to the LEP or DCP are required to go through a process – part of which community consultation and public exhibition of the proposed changes is a mandatory requirement.

- *Appendix E Comparison Table withholds true extent of difference between R2 and E4. Planning controls relating to FSR, Height, and minimum subdivision size are markedly different*

**Comment:** Appendix E – Comparison Table R2, E3 and E4 was included in the Planning Proposal in accordance with Condition 2(g) of the Gateway Determination issued by the Department of Planning and Environment, as follows:

*2. (g) Include a table comparing the land use table of the E4 Environmental Living, E3 Environmental Management and R2 Low Density Residential zones*

Appendix E is simply a condensed version of the Land Use Table contained within the KLEP 2015 in order to assist the community in understanding the differences in the permitted and prohibited uses between the R2, E3 and E4 zones.

The Planning Proposal, Mapping and additional supporting information made available during the public exhibition explained the development standard applying to the E4 Environmental Living zone, specifically:

- **Height** – maximum height of buildings 9.5m. This is the same as the R2 zone.
- **FSR** – The FSR maps indicate a maximum FSR of 0.2:1. However, reference to Clause 4.4(2D) of the KLEP 2015 written instrument overrides the map, and provides a sliding scale for floor space ratio up to 0.4:1, depending on the lot size. For most lots, this will mean that the maximum FSR will be the same as for sites zoned R2. It is only the large lots over 1500sqm where there will be a reduction in FSR.
- **Lot Size** – The minimum lot size is 1500sqm – which means that for a site to be subdivided, each new lot created has to have a minimum lot size of 1500sqm. The 1500sqm minimum lot size is proposed as a means to reduce the potential for increased population density and dwellings within an area identified as being of Bushfire Evacuation Risk. Increasing the number of dwellings and people within these areas will only increase the risk of not being able to evacuate safely in the event of a bushfire.

## **Amendments**

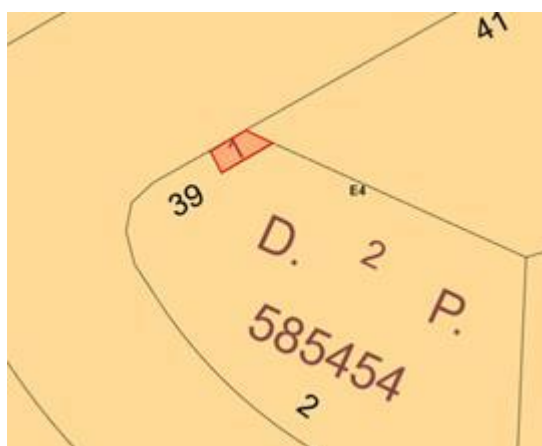
***RE1 Public Recreation, RE2 Private Recreation & E2 Environmental Conservation zoned sites - Development Standards***

It was noted that some sites proposed to be zoned RE1 Public Recreation, RE2 Private Recreation and E2 Environmental Conservation have also been mistakenly mapped with development standards (height, FSR, lot size). It is recommended that maps be amended to remove the development standards from the following properties:

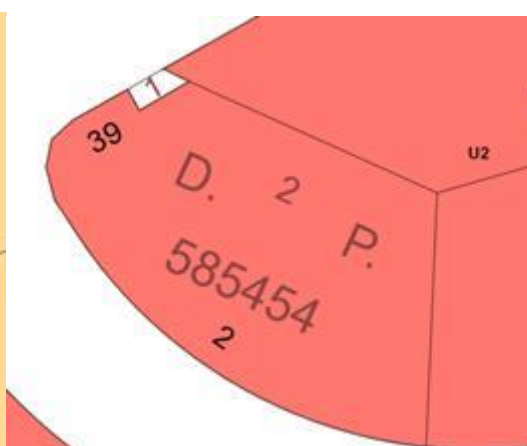
- 420 Bobbin Head Road, North Turrumurra – Lot 102 DP1134640 – remove HOB and FSR;
- 22 St Columbans Green, North Turrumurra – Lot 101 DP1134640 – remove HOB and FSR;
- 410-412 Bobbin Head Road, North Turrumurra – Lots 1-7 DP211722 and Lot 3 DP506214 – remove HOB and FSR;
- 61 Miowera Road, North Turrumurra – Part of Lot 323 DP752031 – remove HOB;
- 118A Koola Avenue, East Killara – Lot 17 DP241746 – remove HOB, FSR and LSZ.

### **Lot 1 DP585454 – Minimum Lot Size**

Lot 1 DP585454 is a substation on the corner of 2 Forde Place and 41 Curtain Avenue, North Wahroonga. The lot is proposed to be zoned E4 Environmental Living as shown on the proposed zoning map excerpt below. The lot has been mapped with HOB and FSR development standards associated with the E4 zoning. In error, the lot has not been mapped with a Minimum Lot Size, as shown on the lot size map excerpt below. It is recommended that the Lot Size Map be amended to map the lot with a Minimum Lot Size of U2 – 1500sqm, in line with the minimum lot size applying to E4 zoned land.



Zoning Map Excerpt



Lot Size Map Excerpt

## **INTEGRATED PLANNING AND REPORTING**

Places, Spaces and Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2 – Managing Urban Change	Land use strategies, plans and processes are in place to effectively manage the impact of new development	Implement and monitor the Local Environmental Plans and supporting Development Control Plans

## **GOVERNANCE MATTERS**

The process for the preparation and implementation of the planning proposal is governed by the provisions contained in the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

Council sought the plan making delegation under Section 23 of the *EP&A Act 1979* to finalise the Planning Proposal. In issuing the Gateway Determination, the Department considered the nature of the Planning Proposal and decided not to issue an authorisation for Council to exercise delegation to make this plan. Should Council resolve to proceed to make this plan, it will need to be sent to the Department of Planning and Environment and the Greater Sydney Commission to draft and finalise the amendment to the KLEP 2015.

## **RISK MANAGEMENT**

These 13 deferred areas are still the subject of the *Ku-ring-gai Planning Scheme Ordinance*, which as a planning document is outdated in its approach to zoning, land use controls and difficult to interpret. This planning proposal seeks to include the 13 deferred areas in to the *KLEP 2015*. There is a risk that if Council does not progress the amendment to the *KLEP 2015* to include the 13 deferred areas, there could be ongoing uncertainty for both staff and the general public.

There is a risk that if the permitted land uses are drawn to restrictively within the E2 zone applying to 20 Kanowar Avenue, East Killara, it may, depending on the circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority, which under the circumstances would be Council. There is no identified funding source for such an acquisition.

## **FINANCIAL CONSIDERATIONS**

The cost for the preparation of this planning proposal and supporting studies is covered by the Urban Planning - Strategy and Environment operational budget.

## **SOCIAL CONSIDERATIONS**

Social issues cover all aspects of human life, including how we live, our culture, our community, health, wellbeing and aspirations. It is not expected that the planning proposal will result in any adverse social impacts.

## **ENVIRONMENTAL CONSIDERATIONS**

The planning proposal and the use of the E4 zoning is a proactive approach to both the management of natural resources and the management of environmental hazards caused by bushfire risk.

Biodiversity assessments of 56-58 Koola Avenue and 20 Kanowar Avenue, East Killara were undertaken by independent consultants in order to evaluate the site conditions and potential ecological constraints on the sites in order to inform the proposed future land use and zoning.

20 Kanowar Avenue, East Killara is proposed to be zoned E2 Environmental Conservation as the site has high ecological values.

## **COMMUNITY CONSULTATION**

Further consultation with the NSW Rural Fire Service and NSW Police was undertaken prior to public exhibition. In accordance with the conditions of the Gateway Determination, the Planning Proposal was placed on public exhibition from 17 November 2016 – 16 December 2016

All affected properties were sent a letter notifying them of the public exhibition. The public exhibition was also advertised in the North Shore Times and on Councils website.

The exhibition material was available on Councils website, and hard copies were available at Customer Service. All persons who made a formal submission were notified of this matter coming back to Council.

## **INTERNAL CONSULTATION**

Council officers from Development and Regulation and Strategy and Environment have been consulted with during the preparation of the proposal and this report.

## **SUMMARY**

The planning proposal has been prepared to include the 13 deferred areas into the KLEP 2015 with appropriate zoning and development standards recognising the high bushfire evacuation risks within these areas.

The E4 Environmental Living zone is a planning measure to manage and prohibit land uses that are incompatible with the evacuation risk from these areas during bushfire – these land uses include child care centres, group homes and respite day care centres – as these forms of development provide for people who are particularly vulnerable during a bushfire and increase evacuation risks in the event of bushfire. The E4 zone is also a way to prevent increase in residential density through limiting further subdivision within these areas, and thus not increasing the amount of people or cars trying to evacuate from an area during a bushfire emergency evacuation.

The Planning Proposal was publically exhibited from 17 November to 16 December 2016.

This report considers and assesses the submissions made in response to the public exhibition of the planning proposal, from both the community and from the relevant state agencies. The report recommends that the Council adopt the planning proposal and requests the Greater Sydney Commission to make the plan.

## **RECOMMENDATION:**

- A. That Council adopts the Planning Proposal for Areas Deferred from the Ku-ring-gai Local Environmental Plan 2015 subject to the following amendments:
  - i. maps be amended to remove the development standards from the following properties:
    - a. 420 Bobbin Head Road, North Turramurra – Lot 102 DP1134640 – remove HOB and FSR;
    - b. 22 St Columbans Green, North Turramurra – Lot 101 DP1134640 – remove HOB and FSR;
    - c. 410-412 Bobbin Head Road, North Turramurra – Lots 1-7 DP211722 and Lot 3 DP506214 – remove HOB and FSR;
    - d. 61 Miowera Road, North Turramurra – Part of Lot 323 DP752031 – remove HOB;
    - e. 118A Koola Avenue, East Killara – Lot 17 DP241746 – remove HOB, FSR and LSZ.
  - ii. the Minimum Lot Size map be amended to include mapping of U2 – 1500 over Lot 1 DP585454.
  - iii. Lot A DP386703 (part of Killara High School) be amended to SP2 Educational Establishment zoning, consistent with the zoning applying to the rest of the school site.
- B. That the Planning Proposal be submitted to the Department of Planning and Environment in accordance with Section 59 of the *Environmental Planning and Assessment Act 1979*, and the Greater Sydney Commission be requested to make the plan
- C. That those who made submissions be notified of Council's decision.

Alexandra Plumb  
Urban Planner

Craige Wyse  
Team Leader Urban Planning

Antony Fabbro  
Manager Urban & Heritage Planning

Andrew Watson  
Director Strategy & Environment

## **Resolved:**

[Moved: Councillors Malicki/Berlioz]

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- C. That those who made submissions be notified of Council's decision.

**CARRIED UNANIMOUSLY**