

Attachment D2

NSW Rural Fire Service comments and bushfire Issues

Issue: Rezoning of deferred areas

The RFS has cited concerns that the proposed R2 Low Density Residential, E3 Environmental Living and E4 Environmental Living Zones may allow an increase in the level of residential occupation of the deferred areas.

The RFS also notes vulnerable uses are permissible in these zones (as defined in Section 100B of the *Rural Fires Act 1997* and Planning for Bushfire Protection 2006). These vulnerable uses are identified in Section 100B of the *Rural Fires Act 1997* as:

- a school,
- a child care centre,
- a hospital (including a hospital for the mentally ill or mentally disordered),
- a hotel, motel or other tourist accommodation,
- a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,
- a group home within the meaning of State Environmental Planning Policy No 9—Group Homes,
- a retirement village,
- any other purpose prescribed by the regulations.

Issue: Maintain current permissibility's and not increase densities

The RFS does not support any increase in population density in evacuation risk areas, above which is already allowed/permissible (**Attachment E2**). This is especially the case regarding vulnerable uses.

The planning proposal and subsequent draft LEP has been drafted in consultation with the RFS. To address the RFS's advice, Council has utilised land zones to reduce the permissibility of vulnerable uses on bushfire prone land and areas of bushfire evacuation risk, as follows:

▪ E4 Environmental Living

- Council has applied the E4 Environmental Living zoning, to limit permissibility of vulnerable uses in the deferred areas that have bushfire evacuation risks. The vulnerable use of 'home-based child care' remains as a permitted with consent use within this land zoning, and SEPP (Educational Establishments and Child Care Facilities) 2017 also allows home-based child care on bushfire prone land (subject to conditions). A minimum lot size of 1,500 sqm on land to be zoned E4 has been used to reduce subdivision potential and new dwellings in evacuation risk areas.

- **R2 Low Density Residential**
 - Council's application of R2 Low Density Residential zoning, applies to land that has not been identified as bushfire evacuation risk, or having evacuation risk.
- **E2 Environmental Conservation**
 - Council's application of E2 Environmental Conservation applies to environmentally sensitive land, and does not introduce any vulnerable land uses or dwelling entitlements.
- **B2 Local Centre**
 - Council's application of B2 Local Centre zoning to accommodate existing established centres.
- **RE1 Public Recreation and RE2 Private Recreation**
 - Seventeen sites are identified to be rezoned to RE1 Public Recreation (15 – owned by Council) and RE2 Private Recreation (2 – educational purposes/playing fields). These sites do not currently have development standards applying to them. Vulnerable uses identified in these zones include 'child care centres' and 'respite day care centres', however it is considered the development potential of these uses is limited due to their existing open space uses, as the majority of the sites are in Council ownership, and the private sites are used as playing fields for schools.
- **SP2 Infrastructure**
 - The special purpose zoning applies to specific established and existing land uses, including 'educational establishments' (being Killara High School and North Turramurra Public School) and 'water supply system'. The nature of the zone permits the specific named use and ancillary uses, which for an education establishment, may permit child care.

Issue: 20 Kanowar Avenue

The Department required further consultation with the RFS regarding the proposed additional land use of 'eco-tourist facility' at 20 Kanowar Avenue, East Killara, in the original planning proposal. Specific comment was sought on limiting accommodation numbers. Advice from the RFS cited concern of short-term accommodation on the site which was noted as a site of extreme bushfire hazard.

Section 4.2.7 of Planning for Bushfire Projection (2006), limits an eco-tourist facility to not exceed 12 persons, as advised by the RFS. This limit was exhibited as part of the planning proposal.

During and after the exhibition of the proposal, public submissions were received concerning the additional permitted use and subsequent bushfire evacuation risk.

A post exhibition amendment by the Minister's delegate is recommended to change the proposed additional permitted use to a 'dwelling house' and introduce a minimum lot size of 30,000 sqm, to ensure no increase in population or vulnerable uses occur

on the site. A maximum height of building limit of 9.5m has also been applied, being consistent with surrounding height controls. This is discussed in greater detail in Section 8 of the Plan Finalisation Report (**Attachment A**).

Issue: Permissibility of secondary dwellings

Council's prior consultation with the RFS and NSW Police advised that secondary dwellings do not pose a great evacuation risk (page 7 of **Attachment B**).

Accordingly, secondary dwellings are a permissible development type within the E4 zone. Secondary dwellings are not a permissible development type within the E3 zone.

The current zoning of land in the deferred areas (primarily residential) allows for secondary dwellings through the complying development code under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The application of the E4 Environmental Living zoning would still permit secondary dwellings, however, applicants would require development consent through a development application lodged with Council.

Subsequently, the E4 zoning and permissibility of secondary dwellings, will not increase the permissibility of existing population densities. This is consistent with the RFS advice (**Attachment E2**).

Issue: Home based child care in the E4 zoned land.

Home-based child care is identified in the E4 land use table as development permitted with consent. The RFS identifies this land use as a vulnerable use in section 100B of the *Rural Fires Act 1997*. This is the only vulnerable use relating to E4 zoned land. Public submissions also raised concerns regarding the permissibility of home-based child care in the bushfire evacuation risk areas.

Development consent is required for home-based child care on bushfire prone land. The consent process requires bushfire certification, as part of the development application, to be given by NSW RFS. It is considered that this requirement for referral to RFS meets concerns regarding the use on bushfire prone land.

From 1 September 2017, the State Government notified State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017. Home-based child care, not located on bushfire prone land, is exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP). Home-based child care on bushfire prone land, can be considered for complying code development under the SEPP (**Attachment E4**).

While the concerns of the RFS and the public are appreciated, it is not considered appropriate that the draft LEP seek to amend the SEPP provisions (**Attachments E3 and E4**) at the present time, and that any potential change in the policy be undertaken as part of the next review of the SEPP..