

Appendix Two

Petition from Residents
within Lourdes Retirement Village

PETITION

SAFETY OF RESIDENTS OF LOURDES RETIREMENT VILLAGE DURING BUSHFIRE EVACUATION

"We, the undersigned residents of Lourdes Retirement Village 95 Stanhope Road Killara respectfully request Ku-ring-gai Council to reject the Planning Proposal lodged by or on behalf of the Stockland group of companies for the more intensive development of the Lourdes Village site. The Proposal would involve the demolition of more than 50% of the existing buildings on site and the construction of buildings of up to 6 storeys, following rezoning so as to allow a maximum permitted height of 24 metres." (One hundred and twelve [112] signatures).

The proposed development would increase the number of person to the site from a maximum of 244 at present to a figure of at least 550 persons, including an estimated 200 persons in an aged care facility of up to six (6) storeys. The Lourdes site is classified as bushfire prone land and the surrounding bushland is given the highest hazard rating by the NSW Rural Fire Service (RFS).

There is only a single public road (Stanhope Road) which connects to the site. That road becomes a dead-end at the eastern end of the Lourdes Village and in the other direction a significant part of the road is within the 100 metre bushfire buffer delineated by the RFS. Residents note that as from 2 February 2018 Council has rezoned thirteen "Deferred Areas" of the Municipality with a restrictive zoning classification in recognition of the inadequate number of public roads that serve as evacuation routes from those areas in the event of a major bushfire. We note also that such rezoning has proceeded only after extended review, consultation with RFS and Police, and final approval by the NSW Department of Planning and Environment.

The procedure used by Council in evaluating the Deferred Areas indicates that the single evacuation road at Lourdes would be totally inadequate to cope with the numbers of persons projected to occupy the site under the Stockland Planning Proposal. Many of the residents would have restricted mobility and a majority of the occupants of the proposed Aged Care Facility would be bed-ridden, needing considerable resources to evacuate them safely and without undue distress.

Given the clear precedent created by the rezoning of the Deferred Areas, residents respectfully request that Council reject the Planning Proposal. We attach more supporting detail in following four (4) pages together with 11 signature sheets signed by 112 current residents of the Village who subscribe to this petition.

RECOMMENDATION:

That the petition be received and referred to the appropriate Officer of Council for attention.

RESIDENTS COMMITTEE
LOURDES RETIREMENT VILLAGE

Tel 98807273
ddu9053595@bigpond.net.au

Unit 98 Lourdes Village
Stanhope Rd
KILLARA NSW 2071
17th May 2018

Mr Antony Fabbro,
Manager
Urban and Heritage Planning
Ku-ring-gai Council



Dear Mr Fabbro,

Presentation of Petition – Residents of Lourdes Retirement Village

Thank you for your letter of 17th April 2018 advising that the matters contained in Residents' Petition are under active consideration by your staff, and your email today advising that the matter will be considered by Council at its meeting on Tuesday 22nd May. Since receiving your letter, members of the Residents Committee have received in digital form a copy of the complete Stockland Planning Proposal, including particularly the assessment of Bushfire Safety presented by Eco Logical on behalf of Stockland.

We have a number of serious concerns about aspects of that Assessment and have prepared the attached Comments to draw Council's attention to them. The issues raised directly affect resident safety, the key matter at the heart of our Petition.

We apologise for the belated presentation of this further material but as you will appreciate, it is only very recently that this report by Eco Logical has been made available to us. We would be grateful if you would inform Council regarding the matters raised in the Comments. We also request that your staff include consideration of them as part of their examination of the Petition and Planning Proposal.

Yours sincerely,

A handwritten signature in cursive script that reads "Deirdre J. Duncan".

Dr Deirdre J. Duncan,
Chairman,
Residents Committee,
Lourdes Retirement Village

Cc Rathna Rana, Senior Urban Planner, Ku-ring-gai Council

STOCKLAND PLANNING PROPOSAL - COMMENTS ON BUSHFIRE RISK ASSESSMENT BY ECO LOGICAL

Residents have now been given an opportunity to view the Bushfire Risk Assessment forming part of Stockland's Planning Proposal for Lourdes Retirement Village. The assessment was submitted by Eco Logical Australia and prepared by Mr Rod Rose.

We request that these comments be considered along with those included in our formal petition.

EVACUATION RISK

The Eco Logical Assessment deals only briefly with this subject at p 21 as follows:

"The NSW RFS Development Assessment and Planning Officer Josh Calandra after a site inspection on the 6.10.16 agreed with **the author's assessment** [emphasis added] that Stanhope Road is not a bushfire evacuation concern, nor was the increased potential evacuees under the planning proposal considered to exacerbate evacuation risks of the neighbourhood. Stanhope Road residents are unlikely to be evacuated due to their distance from the hazard, with the primary potential evacuees being those who occupy the very eastern end of the Road

The existing Village bushfire response and the evacuation capacity of the facility is constrained by access, development layout, and the design and construction of buildings. It is currently considered a risk to the occupants. The planning proposal whilst increasing the number of people on site has them within buildings meeting contemporary bushfire resilience standards (under AS 3959), provides more efficient and effective access and has the majority of the Village population located in a safer position e.g. further from the hazard."

This comment does not deal with the key issue of residents' Petition to Council, namely the adequacy of the public road system to handle safely the evacuation of residents in a bushfire if the Village were to be redeveloped as proposed. Note that the Eco Logical report was dated 19th June 2017. We consider that this assessment has been overtaken by the decision of the NSW Department of Planning in late 2017 to approve a Planning Proposal by Ku-ring-gai Council for the rezoning of 13 "deferred areas" in the Municipality. This rezoning was made because of the inadequacy of the public road system to handle a bushfire evacuation in those areas.

Ku-ring-gai Council's rezoning Proposal had a gestation period of approximately four and a half years, in which time it was submitted to detailed scrutiny by the RFS, NSW Police Service and the Department of Planning. All these agencies approved the rezoning proposal and in so doing endorsed the evacuation assessment methodology used by Council. Residents consider that the same methodology should be applied to the situation at Lourdes. Residents reiterate that this methodology requires a minimum of three public roads as evacuation routes at Lourdes compared with the single road actually available. The point at issue is not solely the characteristics of that single road, Stanhope Road, but the assessment that a single road is insufficient.

Eco Logical have seemingly relied solely on their statement that an officer of the RFS, Mr Josh Calandra, is said to have agreed with Eco Logical's proposition that Stanhope Rd does not represent "a bushfire concern". On the other hand, Lourdes residents have relied on the Bushfire Evacuation Risk Map for Ku-ring-gai Council, a map that was prepared by the RFS, printed by the Council and certified as suitable for the purpose

of the *Environmental Planning and Assessment Act 1979* by the responsible statutory officer of the RFS, Commissioner Shane Fitzsimmons.

A portion of the Map, included in our petition, shows that Stanhope Rd is within the bushfire hazard zone for approximately 400 m. On this basis it appears to residents that Stanhope Rd is problematic as an evacuation route. This is in addition to our primary concern that a single road is simply inadequate for resident evacuation, using the approved methodology applied in 13 other areas in the Municipality.

We therefore request that Council and the Responsible Planning Authority reject Eco Logical's analysis of evacuation safety and instead use the established precedent that has been applied to the 13 "deferred areas", relying on the contents of the Bushfire Evacuation Risk Map for Ku-ring-gai. We reiterate that the Map has been certified by the responsible statutory officer, the Commissioner of the RFS. We submit that conclusions based on that source should take precedence over the opinion expressed by Eco Logical (which has been engaged by the proponent) and then, on their say so, adopted by Mr Calandra.

RESIDENT CONCERN ABOUT ECO LOGICAL FIRE RISK ASSESSMENT

Under the heading "1.1 Description of proposal" on p. 1 of the Eco Logical Assessment the following appears:

"Notably the subject land and Retirement Village is in a locality **that has not had widespread wildfire and is never likely to experience this** [Emphasis added] as the vegetation is confined to relatively narrow pathways in directions that are not exposed to widespread and major bushfires i.e. a bushfire attack from the northeast to southeast"

Residents consider that this seemingly authoritative statement does not accord with historical records. In Attachment A are several media reports illustrating significant bush fire episodes in this area dating from 1946 to 2009. Two of them were within Killara / East Killara, the rest were in the Ku-ring-gai Municipality in bushland areas not dissimilar to that surrounding Lourdes. The first report refers to Koola and Springdale Avenues, both of them within easy walking distance of Lourdes. The fourth illustrates a bushfire in January 2009 when residents still in the Village recall watching in alarm as the Skycrane was brought into action in smoke-filled skies over East Killara, to the east of the Lourdes site.

These clips, over the period 1946 to 2009 demonstrate that Killara and nearby suburbs have all experienced serious bushfires and it is imprudent for Eco Logical to assert that Lourdes is never likely to experience such events. The gravity of any risk is measured not only by the probability of the event but also by the consequences of its occurrence. Where lives are potentially at risk, a more precautionary approach is demanded rather than that adopted by Eco Logical.

ECO LOGICAL'S ASSESSMENT CLAIMS A DEGREE OF CERTAINTY WHICH IS UNWARRANTED BY THE NATURE OF BUSHFIRES

The following photograph relating to the recent Tathra bushfires demonstrates that expert opinion can be open to serious error due to the unpredictable behaviour of bushfires.

Aerial view of damage to houses – film from TV News Breakfast – road names added.



Note the destruction in Bay View Drive. These houses are zoned as NOT being **Bushfire Prone**. Note also the absence of damage to houses in Wildlife Drive notwithstanding that they abut the bushland at the top of the image and are zoned as **Bushfire Prone**, a dramatic illustration of the difficulty of predicting liability to bushfire damage.

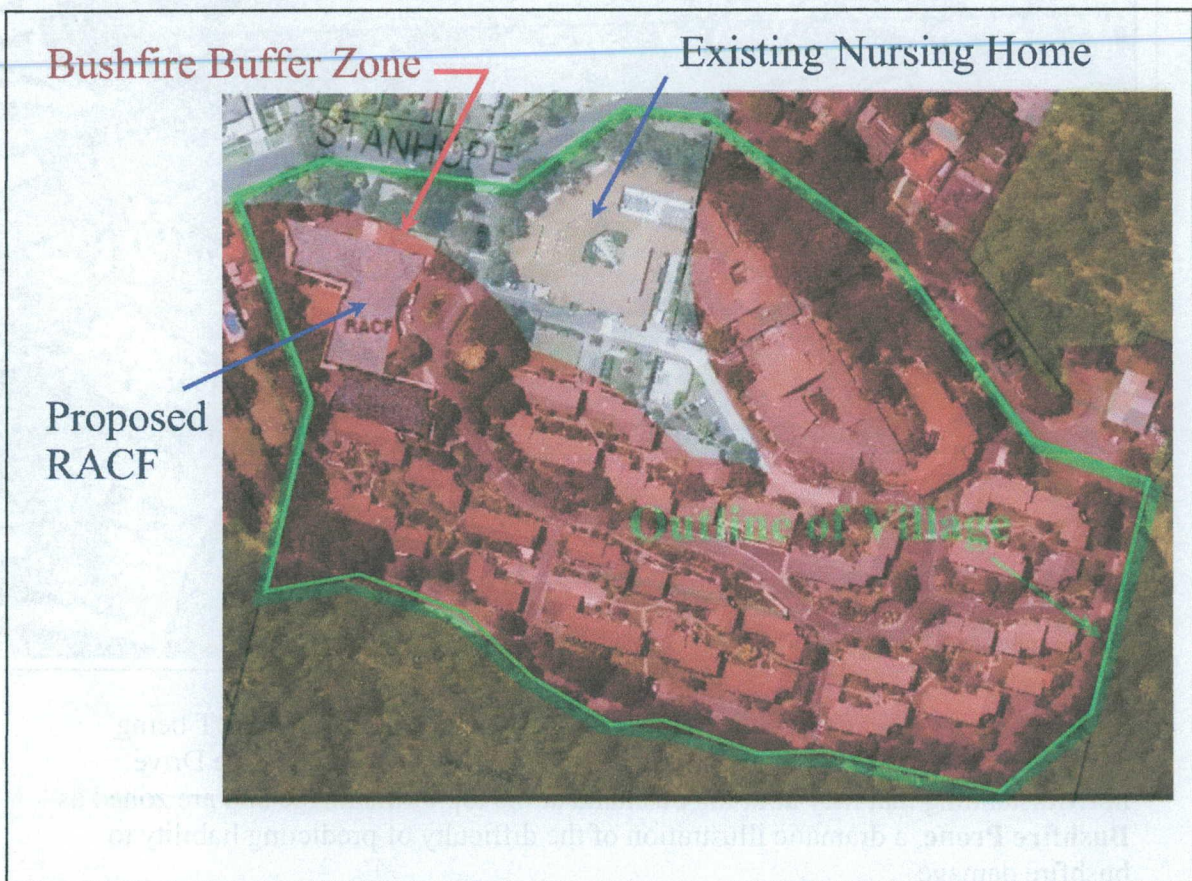
The history of bushfires displays many instances of uncontrollable changes that totally alter the predicted behaviour of the fire and the damage that it causes. Residents consider that there should be a recognition of such uncertainty that is absent from. Eco Logical's assertion that Lourdes "**is never likely to experience**" bushfire damage.

We also point out a basic inconsistency in Eco Logical's assessment process. They first state that a bushfire on this site is never likely to occur, then construct a mathematical model of a fire event using parameters of its own choosing and use the results to argue that the fire safety of the proposed development would be superior to what already exists.

They conclude for example that the existing Nursing Home is more vulnerable than the proposed Residential Aged Care Facility.

“Notably the most vulnerable occupants, in the existing RACF [existing Nursing Home], are moved to a position further from the higher bushfire attack potential into a RACF resilient to the predicted burning attack”.

This is manifestly incorrect. The following graphic shows an overlay of the certified Bushfire Prone Land Map over an aerial view of the existing village. This shows clearly that the existing Nursing Home is virtually the only building in the Village that is NOT within the 100-metre buffer zone prescribed by PBP for an SFPP development. The proposed new Residential Aged Care Facility (RACF) would by contrast sit squarely within the 100 m buffer zone required by the RFS. It would therefore be intrinsically more subject to fire risk than the existing Nursing Home.



Eco Logical’s assessment relies substantially on Table 1 at p.8 of their report.

Table 1: Proposed new RACF: APZ and BAL assessment

Direction from envelope	Effective Slope ¹	Predominant Vegetation ²	PBP Accept. Soln. APZ ³	Performance solution APZ ⁴	Method 2 AS 3959-209 Construction Standard ⁵	Comment
South (Line 1)	Downslope 13.7°	Forest	100 m	55 m	BAL-12.5	Reduced FFDI & SFRM ⁶ used. RACF beyond 10 kW/m ²
South (Line 2)	Downslope 17.7°	Forest	100 m	58 m	BAL-12.5	Reduced FFDI & SFRM used. RACF beyond 10 kW/m ²

This Table shows the Asset Protection Zone (APZ) for the proposed RACF i.e. the required separation between the fire hazard and the building. The fourth column shows the separation required by the RFS document PBP 2006, namely 100 m. The next column shows the separation calculated by Eco Logical for two different slopes of the land, 55 m for an assumed slope of 13.7° and 58 m for a slope of 17.7° . The divergence between the PBP value - 100 m - and those calculated by Eco Logical says in effect that the official guide of the RFS, the PBP, got it wrong by a factor of almost two, and this is not credible. The difference is so large as to leave a large question mark over the parameters and assumptions used by Eco Logical. Residents consider that the figure of 100 m. in the PBP, calculated by the statutory body RFS, and printed in the Bushfire Prone Land Map should be used. If this figure is used, the conclusion by Eco Logical that the new RACF provides a better risk outcome than the existing Nursing Home cannot be sustained.

POTENTIAL FOR TENSION BETWEEN PBP 2006 AND THE CONCEPT OF INFILL

PBP 2006 includes special provisions for Retirement Villages and Aged Care Facilities, classifying them in a category known as a Special Fire Protection Purpose (SFPP). For areas not regarded as Infill, PBP sets out some important principles and prescriptive requirements in recognition of the special needs of residents living in an SFPP development.

These are not mere technicalities. They establish important principles for protecting the lives of residents and should not be disregarded lightly. However, if a proposed building is deemed to be “infill” as is the case in the Stockland Planning Proposal, the mandatory prescriptions in PBP are substantially diluted. The following extracts from PBP demonstrate this.

“4.2.5 SFPPs as infill

“In circumstances where alterations or additions to existing SFPP’s facilities are proposed, the RFS requires an appropriate combination of bush fire protection measures and compliance with the intent and performance criteria of each measure within section 4.3.5”.

Whereas earlier sections of PBP contain clear prescriptions, 4.3.5 is largely comprised of non-specific generalisations and cross-references, including the following:

Clause 4.35

“However, it is also acknowledged that existing circumstances may make the preferred standards difficult to achieve. In such cases, the specific objectives in Section 4.2.3 are to be followed.”

But note that clause 4.2.3 begins with the following, a statement which takes us back to where we started:

“4.2.3 Specific Objectives for Special Fire Protection Purpose Developments

“While the ‘measures in combination’ continues as a principle, there is more reliance on space around buildings (as defensible space and APZs for fuel load control) and less reliance on construction standards.”

By contrast, the Conclusion offered by Eco Logical relies almost totally on construction standards – see p18 of their Assessment. This opinion is repeated at p 38 of Stockland’s Planning Proposal which states that

“This [Eco Logical] assessment identifies that the southern portions of the site are significantly constrained as a result of the bushfire affectation. However, with an engineering approach agreed with NSW RFS, the site may be developed in the future to improve the site’s risk profile.”

We are left therefore with a conflict between what Stockland have proposed, an engineered solution, or alternatively, PBP 4.2.3 which requires that “there is more reliance on space around buildings (as defensible space and APZs for fuel load control) and less reliance on construction standards”.

Residents are concerned that approval is being sought for a development where there appears to be an unresolvable conflict between PBP requirements and those proposed by Stockland. Since PBP 2006 has few prescriptive requirements in an Infill development, it seems likely that the RFS would give weight to the “expert opinion” of Eco Logical. It is well known that where “expert evidence” is involved, the expert piper tends to play the tune that pleases his paymaster. The inaccuracies and inconsistencies we have noted in the Eco Logical Assessment gives support to this view, and we are concerned that reliance on their report has the potential to result in what might be termed “an approved disaster”.

We therefore wish to emphasise the following prescriptive requirements in PBP that do appear to be relevant. As noted previously, for an infill development

“the RFS requires an appropriate combination of bush fire protection measures and compliance with the intent and performance criteria of each measure within section 4.3.5”

The first of these requirements is described in PBP Clause 3.2 “Bush Fire Protection Measures in Combination, as follows:

“A fuel-reduced, physical separation between buildings and bush fire hazards **is the key element in the suite of measures.**” [emphasis added]

“for SFPPs, where the characteristics of occupants require special care (e.g. elderly or school children), **construction standards are less significant** and the required APZ is crucial for emergency services to operate in support of those occupants.” [emphasis added]

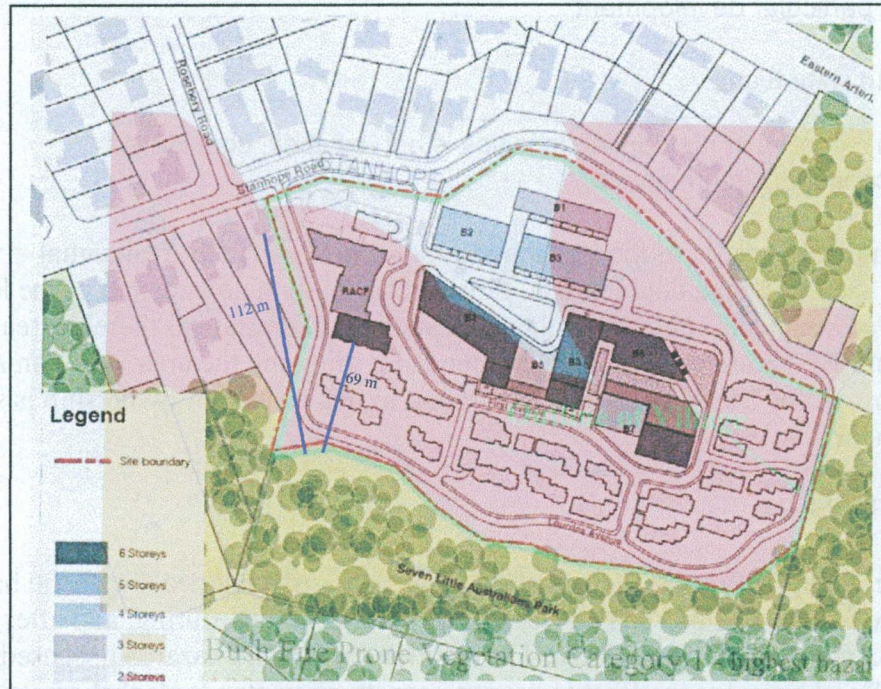
“In summary, the provision of an APZ, clearly separating buildings from hazards, and reducing fuel loads, is the first step”

Clause 3.3 of PBP states

“Reduced APZs and the use of adjoining lands for meeting APZ requirements will only be permitted in exceptional circumstances based on the merits of the particular development.”

“For exceptional circumstances to apply, the following principles should be demonstrated:...

the building line should be no closer to the hazard than neighbouring properties”...[emphasis added]



This criterion is NOT met in respect of the proposed Residential Aged Care Facility, as evidenced by the above aerial view of the site from the Stockland Planning Proposal, overlaid by a section the RFS Bushfire Prone Land Map. The proposed Residential Aged Care Facility is 69 m from the bushfire hazard. The neighbouring property, No 91 Stanhope Rd, is 112 m distant from the nearest point of fire hazard. In other words, the proposed building is **significantly closer** to the hazard than the neighbouring building. We submit that by reason of its failure to satisfy that criterion, the Proposal should be rejected.

Note also that the purpose of an APZ is to minimise the presence of flammable material between the fire hazard and the proposed building. Eco Logical have identified Independent Living Units along Lourdes Avenue (i.e. close to the fire hazard) as being within the flame zone and because of their 1980s construction standards, prone to ignition. Some of these buildings are between the proposed RACF and the fire hazard. Note too that Draft PBP 2017, reflecting the experience of the Victorian bushfires, has warned of the adverse impact on the effectiveness of an APZ due to “building to building’ propagation of fires. This adds further to residents’ concern, not only for their own welfare, but also the safety of residents and emergency service workers during a forced evacuation

APZ on neighbouring land. There is one further “exceptional circumstance” namely that the proposed RACF will not be constructed on Stockland property but on a newly subdivided lot to be sold by Stockland to Opal, the operators under leasehold of the existing Stockland Nursing Home. The APZ for the proposed RACF would therefore lie totally within “neighbouring land”. PBP2006 states that such an arrangement

“will only be permitted in exceptional circumstances, based on the merits of the particular development”.

It goes on to state that

“An increase in residential densities is not, by itself, considered an exceptional circumstance”.

The fundamental purpose of the Planning Proposal is to increase “residential densities”, - to more than double them. Since a change in the ownership of the land is also involved, residents submit that the ‘exceptional circumstance’ thereby created is not one that PBP regards as acceptable grounds for allowing the creation of an APZ over land owned by Stockland. The background to this change of ownership is set out in Attachment 2.

SMOKE HAZARD

Neither the Planning Proposal nor the Eco Logical Assessment deals with the hazards of smoke, which can be present for substantial periods before, during, and after the passage of a fire through the Village. The solution to bushfire hazards proposed by Stockland/Eco Logical is in effect to propose construction standards that create fireproof bunkers.

“Under this rapid bushfire-attack scenario, the proposal provides a level of on-site refuge equivalent to national best practice and much enhanced resilience over the existing situation.”

Nowhere does there seem to be an acknowledgement that frail elderly with respiratory illness are particularly likely to be badly affected by smoke. PBP 2006 acknowledges briefly the risk of smoke hazard to elderly residents of SFPP properties but does not include any specific requirements to mitigate the risk.

If it is intended that Stockland’s fire-proof bunkers will also operate to prevent smoke hazards, much more information needs to be forthcoming. Will the buildings be hermetically sealed and pressurised? How is this to be achieved in six storey tower buildings occupied by residents who are living independently, particularly at weekends, with no managerial staff on site?

Effective smoke control would require hospital grade standards for the reliability of air-conditioning, filtration and power supply. Lourdes is served by a single 11kV power line that for 300 m of its length passes through the bushland that is the source of the fire hazard. It must therefore be regarded as at risk in a major fire. Large on-site back-up generators would be required, and exceptional standards of operating and maintenance procedures would be needed year after year to ensure that back-up power was available when needed.

There are numerous examples of installations that fail to meet these requirements. There can be a diversity of reasons such as poor management, poorly trained staff and lack of the expertise that cannot easily be afforded in the competitive environment within which retirement villages and aged care facilities operate. It is not considered prudent to rely on such measures where human life is involved. The experience of the Grenfell tower fire in the UK is not a strong recommendation for engineered solutions that are not subject to the most stringent controls. There is no evidence that regulatory controls exist locally that would ensure the on-going reliability of engineered smoke control measures at Lourdes.

The difficulties that flow from the application of PBP 2006 to SFPP developments are not a problem unique to the Lourdes site. The definition of Infill in PBP 2006 indicates that the greater part of bushfire prone land in the metropolitan area of Sydney would fall within this category whenever proposals were made for higher density on the sites of retirement villages and aged care facilities. The acceptance by the Responsible Planning Authority of the interpretation proffered by Stockland, would therefore very likely have an impact well beyond Lourdes and the Ku-ring-gai Municipality.

Because of the concessions available for Infill in PBP and their dependence on the competence and impartiality of the fire risk assessor, we request that consideration of the Stockland Planning Proposal should be based on a precautionary approach to fire safety, and for the reasons set out in this document, we ask that the Proposal be rejected.

CONCLUSION

We, the residents of Lourdes Retirement Village, object to the Redevelopment of the Village as proposed by Stockland and, respectfully, suggest the proposal should be rejected based on the following:

1 Evacuation Risk. Using the Cova methodology adopted by Council for the “Deferred Areas” we estimate that three roads are required for the safe evacuation of the numbers of residents contemplated in the Stockland Planning Proposal. There is only a single road, Stanhope Rd and this is itself within the RFS 100 m. buffer zone.

2 Eco Logical assertion that Lourdes is never likely to experience bushfires. Residents reject this assertion as imprudent and unfounded, based on cited historic media reports of fires in this area.

3 The conservative approach to risk assessment advocated by PBP 2006 should have been pursued by Eco Logical. The Eco Logical assessment of required APZ in Table 1 at p. 8 of their report is so different from that estimated by RFS as to cast serious doubt over the parameters Eco Logical have chosen to use in their assessment.

4 PBP 2006 emphasises that the APZ, the separation of buildings from fire hazard is the preferred Bush Fire Protection Measure, ahead of reliance on construction standards. Eco Logical have ignored this prescription. PBP also requires that a proposed building must be no closer to the fire hazard than buildings on neighbouring properties (see p. 13 of PBP). This too has been ignored. The neighbouring building at 91 Stanhope Rd is 112 m from the hazard, Stockland have proposed that a Residential Aged Care Facility be built 69 m from the hazard. This is unacceptable.

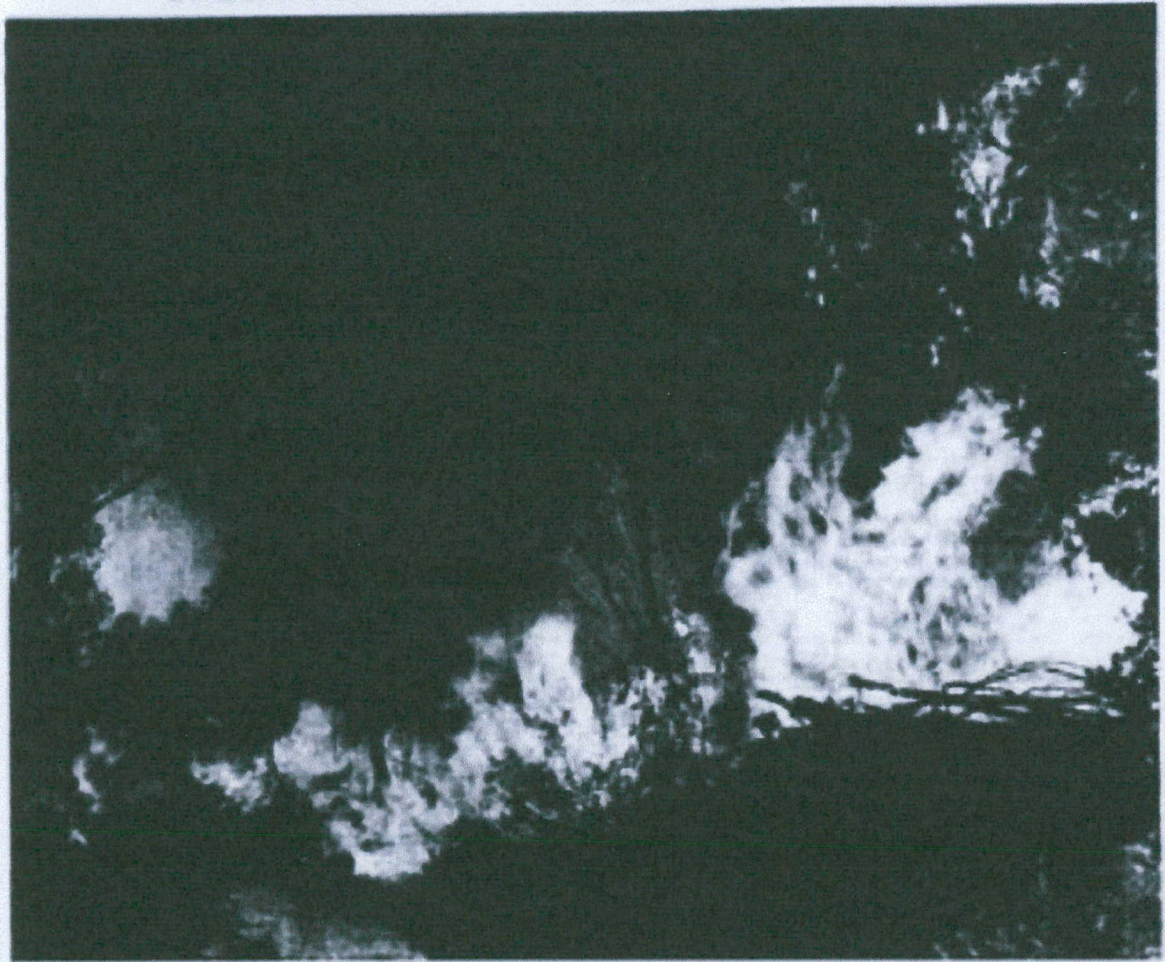
5 Smoke Hazard. PBP 2006 draws attention to the risk that bushfire smoke represents for frail elderly residents with respiratory problems. The Planning Proposal is based on high rise buildings as fire-proof bunkers. But it is silent on the engineered measures required to protect residents in those bunkers from smoke and there is no mention of the regulatory and other measures necessary to ensure that required standards would be maintained throughout the life of the buildings. This is unacceptable.

ATTACHMENT A

EXAMPLES OF BUSHFIRES IN THE VICINITY OF LOURDES

- 1 Sydney Morning Herald Saturday 2 February 1946, page 1**
(From TROVE records of National Library)

**BUSHFIRES ON CITY'S OUTSKIRTS:
SPECTACLE AT KILLARA**



This photograph accompanied the following text.

Bushfires Menace Suburban Homes While Temperature Exceeds

With the midday temperature in the city exceeding 100 degrees, bushfires raged yesterday in many North Shore suburbs. Fires broke out also in the Richmond-Penrith district, where two cottages were destroyed at Londonderry. Hot winds fanned the smouldering fires in National Park into new activity.

The most serious suburban out-breaks were at Killara, where homes in Springdale Road were again threatened, and at French's Forest, where one fire was fought close to the Dalwood Home for Children.

Gordon, Lane Cove, and Willoughby brigades fought the rapidly spreading flames at a number of places in an area bounded by Springdale Road, Burwood Avenue, and Koola Avenue, East Killara.

Several homes were threatened, but firemen, aided by a number of civilians, prevented serious damage.

In the extensive bush areas between East Lindfield and Killara, fires which had swept through the hills and gullies during the last few days and endangered several houses again became a threat to property when they were fanned by hot westerly winds yesterday morning.

When fires which had been burning during the night in French's Forest swept up the bush-clad gullies behind the Dalwood Home, Manly and Mow-

TROVE have also supplied the following more readable version of the text.

Bushfires Menace Suburban Homes While Temperature Exceeds 100

With the midday temperature in the city exceeding 100 degrees, bushfires raged yesterday in many North Shore suburbs. Fires broke out also in the Richmond-Penrith district, where two cottages were destroyed at Londonderry. Hot winds fanned the smouldering fires in National Park into new activity.

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In the extensive bush areas between East Lindfield and Killara, fires which had swept through the hills and gullies during the last few days and endangered several houses again became a threat to property when they were fanned by hot westerly winds yesterday morning.

2 Photo from Ku-ring-gai Council in North Shore Times re January 1994 Bushfires



Wall of flames approach St. Ives Showground in 1994. Pic courtesy of Kur-ring-gai Municipal Council.

Recollections of RFS member Jim Fahey re Lindfield Fires 1994

"I remember it vividly," he recalled. "A lot of people in the RFS do."

It was like a scene out of a movie, power poles were crashing around firefighters and green wheely bins were on fire and being blown around the streets by the strong winds.

In Lindfield, it took moments for fire to run up a valley near Lady Game Drive.

It was so quick, according to Mr Fahey, that a lot of people on Winchester Ave and Lyle Ave couldn't even get out of the street.

3 Woman fleeing home destroyed by bushfire in Winchester Ave Lindfield 1994 (from North Shore Times)



4 From ABC TV news January 2009

An air crane dumps water on a bushfire threatening homes in East Killara



ATTACHMENT B

BACKGROUND TO SALE OF STOCKLAND LAND TO OPAL.

Although we can find no reference to it in the Planning Proposal, the new RACF is proposed to be built by Opal Aged Care under the terms of a Business Deed of Sale between Stockland and the owners of Opal.

In 2014, under the terms of that Deed and an associated lease, Stockland leased the existing Nursing Home and Lodge to Opal for an annual rental of one dollar and gave Opal an option to buy a parcel of land within the Village for the construction of a new aged care facility of 'at least 130 bed' capacity. These comments are based on a search of title for the Village. That search disclosed a caveat lodged by Opal interests to protect their option to buy the land, plus the terms of the lease document in respect of the existing nursing home and the proposed new Aged Care Facility.

The Caveat is shown on subsequent pages. The lease document runs to approximately 65 pages. It can be obtained by a search on the Lourdes Title at LPI or alternatively a copy can be provided if required.

Ref. Lourdes /Stc:T

Form: 08X
Release: 4-1**CAVEAT**Prohibiting Recording of a Dealing or Plan
or Granting of a Possessory Application
New South Wales

Section 74F Real Property Act 1900

**AI705535B**

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 66B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

21/634645, 22/634645

(B) REGISTERED DEALING

Number

Torrens Title

(C) LODGED BYDocument
Collection
BoxName, Address or DX, Telephone, and Customer Account Number if any
Herbert Smith Freehill
DX 361, Sydney NSW 2001
Phone: (02) 9225 5500, LFFW: 1243176

27C

Reference: 82275497

CODE

X

(D) REGISTERED PROPRIETORNexus Limited ACN 087 648 691
Level 25, 133-145 Castlereagh Street, Sydney NSW

Postcode: 2000

(E) CAVEATOR

Insert the full name and address (residential if individual/registered office if body corporate)

Principal Healthcare Finance Limited AEU 33 069 875 476
Level 27, 135 King Street, Sydney NSW

Postcode: 2000

(F) NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR**IMPORTANT NOTE:** The address may be a street address. If desired, a Document Exchange box in NSW may be provided in addition. If the caveator's name or address for service of notices changes, notification must be lodged on form OBCX.Name: Phillip Kattenbury
Street Address: Herbert Smith Freehill
c/- ANZ Tower, 161 Castlereagh Street,
Sydney NSW

NSW postcode: 2000

Document Exchange Box in NSW (additional): 361 Sydney

(G) ACTION PROHIBITED

1, 2, 4 and 7

(H) The caveator claims to be entitled to the estate or interest in the above land specified in Schedule 1 by virtue of the instrument and facts set out in that schedule and prohibits the Registrar General from taking, with respect to the above land, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

1009

Page 1 of 2

SD 2

Ref: Lourdes / Src: T

- WARNING: care should be exercised in completing a caveat form. An unsupported caveat may be challenged in the Supreme Court, compensation may be awarded for lodging a caveat without justification (section 74P Real Property Act 1900). Failure to observe the requirements of regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(I) SCHEDULE 1 Estate or interest claimed

Particulars of the estate or interest in the abovementioned land		
Equitable interest		
By virtue of the instrument referred to below		
Nature of instrument	Date	Parties
Business Sale Deed	26 June 2014	The registered proprietor identified in item (D), and the caveator identified in item (B).
By virtue of the facts stated below		
The registered proprietor identified in item (D) has agreed for value to grant to the caveator identified in item (E) an option to purchase part of the land identified in item (A).		

(J) SCHEDULE 2 Action prohibited by this caveat

- The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration of delimitation plan¹ No. _____
- The granting of any possessory application² with respect to the land in the Torrens Title referred to above.
- The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
- The granting of an application to extinguish the _____ created by _____ No. _____
- The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) STATUTORY DECLARATION³

I, Phillip Hattenbury

solemnly and sincerely declare that—

- To the best of my knowledge, information and belief
 - (a) the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
 - (b) the address specified in (D) as the address of the registered proprietor is the correct address.
- This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor; I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at SYDNEY in the New South Wales on 30 June 2014

in the presence of ALASDAIR KNOX of SYDNEY

Justice of the Peace (J.P. Number: _____) Practising Solicitor

Other qualified witness (specify) _____

⁴ who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a reasonable justification for not removing the covering; and
- I know how to identify the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a DRIVERS LICENCE ^(12m/12y)

Signature of witness: [Signature] Signature of declarant: [Signature]

Capacity of declarant if other than the caveator: CAVEATOR'S SOLICITOR

(L) CONSENT (section 74O Real Property Act 1900)⁵

I, the registered proprietor named at (D) possessory applicant, for the purposes of section 74O only, consent to this caveat.

Signature of registered proprietor/possessory applicant _____

- A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
- An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
- As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment.⁶ If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.
- Only one capacity can be selected, either registered proprietor or possessory applicant, cross out whichever does not apply.

RESIDENTS COMMITTEE
LOURDES RETIREMENT VILLAGE

Tel 0411 386 284
ddu9053595@bigpond.net.au

Unit 98 Lourdes Village
95 Stanhope Rd
KILLARA NSW 2071
12 March 2018

Councillor Jennifer Anderson,
Mayor
Ku-ring-gai Municipal Council
Locked Bag 1006, Gordon, NSW, 2072

Dear Mayor Anderson,

Presentation of Petition – Residents of Lourdes Retirement village

In your capacity as Ward Councillor for Roseville Ward we would be grateful if you would present to Council the attached Petition from residents of this Village expressing their opposition to the Planning Proposal from Stockland regarding the rezoning of the Lourdes site.

Residents are concerned that by causing overdevelopment of this site the Proposal would put them gravely at risk during a bushfire evacuation and request that Council do all in its power to prevent this happening.

Yours sincerely,



Dr Deirdre J. Duncan
Chairman, Residents Committee
Lourdes Retirement Village

PETITION TO KU-RING-GAI COUNCIL

SAFETY OF RESIDENTS OF LOURDES RETIREMENT VILLAGE DURING BUSHFIRE EVACUATION

We the undersigned residents of Lourdes Retirement Village 95 Stanhope Rd Killara respectfully request Kuring-gai Council to reject the Planning Proposal lodged by or on behalf of the Stockland group of companies for the more intensive development of the Lourdes Village site. The Proposal would involve the demolition of more than 50% of the existing buildings on site and the construction of buildings of up to 6 storeys, following rezoning so as to allow a maximum permitted height of 24 metres.

The proposed development would increase the numbers of persons living on the site from a maximum of 244 at present to a figure of at least 550 persons, including an estimated 200 persons in an aged care facility of up to 6 storeys. The Lourdes site is classified as bushfire prone land and the surrounding bushland is given the highest hazard rating by the NSW Rural Fire Service (RFS).

There is only a single public road (Stanhope Road) which connects to the site. That road becomes a dead-end at the eastern end of the Lourdes Village and in the other direction a significant part of the road is within the 100 metre bushfire buffer delineated by the RFS. Residents note that as from 2nd February 2018 Council has rezoned thirteen "Deferred Areas" of the Municipality with a restrictive zoning classification in recognition of the inadequate number of public roads that serve as evacuation routes from those areas in the event of a major bushfire. We note also that such rezoning has proceeded only after extended review, consultation with RFS and Police, and final approval by the NSW Department of Planning and Environment.

The procedure used by Council in evaluating the Deferred Areas indicates that the single evacuation road at Lourdes would be totally inadequate to cope with the numbers of persons projected to occupy the site under the Stockland Planning Proposal. Many of the residents would have restricted mobility and a majority of the occupants of the proposed Aged Care Facility would be bed-ridden, needing considerable resources to evacuate them safely and without undue distress.

Given the clear precedent created by the rezoning of the Deferred Areas, residents respectfully request that Council reject the Planning Proposal. We attach more supporting detail in the following four pages together with 11 signature sheets signed by 12 current residents of the Village who subscribe to this Petition.



Dr Deirdre J. Duncan,
Chairman of the Residents Committee

INTRODUCTION

Residents of Lourdes Retirement Village are greatly concerned about the potential of the Stockland Planning Proposal to increase the risk to residents during an evacuation of the Lourdes site during a major bushfire. The site is already classified as a category 1 bushfire evacuation risk on the Bushfire Prone Land Map and Bushfire Evacuation Risk Map of the Rural Fire Service (RFS). That risk will be compounded by the more intensive occupancy of the site proposed by Stockland. The comparative occupancy figures are as follows:

Type of housing	Present Number	Proposed Number
ILUs + Serviced Apartments	157	350*
Aged Care beds	87	200*
TOTAL	244	550

* derived from floor areas nominated in Planning Proposal and stated intention to retain 70 existing ILUs.

Ku-ring-gai Council recently announced that from 2nd February 2018 it had rezoned thirteen "Deferred Areas" in Ku-ring-gai to a more restrictive category following approval by the Department of Planning and Environment. This was because in each of those areas it was judged that there were insufficient public roads to safely evacuate the numbers of residents involved during a major bushfire. This assessment was based on the following criteria:

NUMBER OF HOUSEHOLDS	MINIMUM NUMBER OF EXIT ROADS
1 – 50	1
51 - 300	2
300 – 600	3
601+	4

If the Planning Proposal were to be approved, the number to be evacuated at Lourdes would increase to 550. The above criteria, adopted by Council in relation to the 13 Deferred Areas, with the concurrence of the Rural Fire Service, the Police and the Department of Planning, would require a minimum of three roads connected to the Lourdes site if that number of residents were to be safely evacuated in the event of a major bushfire.

The nearest of the 13 areas recently rezoned is East Killara, which shares the same body of bushland as Lourdes.

- The fire risk at the two sites is comparable,

- East Killara is reckoned to have two or three public roads as evacuation routes,
- Lourdes has one - Stanhope Road - which comes to a dead end at the eastern boundary of the Lourdes site. In the other direction, for a distance of approximately four hundred metres, Stanhope Rd is itself within the bushfire buffer zone published by the RFS and must therefore be regarded as problematic as an evacuation route in a serious bushfire event. See attachment.
- The required number of evacuation routes for the redeveloped Village would be three, two more than the single route available.
- Lourdes residents in Independent Living would be far less mobile than the general populace in East Killara.
- The patients in the proposed new Aged Care Facility at Lourdes would include a majority of bed-ridden patients and a significant number with varying degrees of dementia. They would require significant numbers of nurses, carers and emergency service personnel to ensure their safe evacuation and to avoid undue stress, a complication absent from the situation in East Killara.

For these reasons residents consider that the evacuation route standards that have been applied to East Killara should apply even more strongly at Lourdes, and that the high density proposed for Lourdes would put resident safety at grave risk during a bushfire evacuation. We request therefore that Council make a determination that the Lourdes Planning Proposal would create an unacceptable risk to residents during a bushfire evacuation – as it has done in respect of the rezoning of each of the 13 Deferred Areas.

The Strategic Merit Test

The previous comments feed into the question of whether the Proposal meets the “Strategic Merit Test” formulated by the Department of Planning and Environment. This Test has become the principal focus of the government’s assessment process in respect of proposals to amend an LEP. The assessment of Strategic Merit Test includes a requirement that a Planning Proposal must demonstrate Site Specific Merit including specifically, consideration of “the natural environment (including known significant environmental values, resources or **hazards**)” [emphasis added]. The following is relevant to such an evaluation:

As noted above, because of the level 1 bushfire evacuation risk rating, the single public road connected to Lourdes would be seriously inadequate to handle the safe evacuation of the number of residents in the redeveloped village, and residents would be in grave danger. Residents conclude that in this critical respect the proposed rezoning of the Lourdes site offers no site-specific strategic merit. On the contrary it offers a far more hazardous outcome for residents than the current situation.

Residents therefore contend that the Planning Proposal should be rejected by Council in that it fails utterly to demonstrate site-specific merit as required by the Strategic Merit Test.

Height of Buildings

The overdevelopment proposed at Lourdes is a direct consequence of Stockland's proposal to increase the maximum height of buildings from 9.5 m to 24 m. This increase is excessive and is not considered to be a bona-fide use of the proposed zoning of R3 Medium Density Residential based on the following:

Custom and Usage in Ku-ring-gai. Within KLEP 2015, any property zoned R3 Medium Density in predominantly residential areas is limited to a height of 9.5 m, the same as surrounding lots zoned R2 Low Density. There appear to be only four clusters of lots in this category in the whole of the municipality, one in Doyle Place at the lower end of St John's Road Gordon, one off Ayres Road in St Ives and two on the boundary with Hornsby Shire in Wahroonga near the start of the M2 Freeway, all with a maximum permitted height of 9.5 m.

In areas zoned R3 close to the Pacific Highway and/or North Shore Rail Line, the maximum permitted height is 11.5 m, substantially lower than Stockland's proposed 24 m. Even in areas near the Highway or Rail Line that are zoned R4 High Density Residential, the maximum permitted height is 17.5 m. The Lourdes site is well remote from the Highway, Rail Line and Town Centres, and is surrounded by residential properties that are zoned R2 limited to a height of 9.5 m.

It is unrealistic therefore to assert, as Stockland have done, that a height of 24 m at Lourdes over land purportedly zoned R3 would not create a precedent in the municipality.

Creation of Precedent

In the Stockland Proposal the key development standard proposed to be changed is the permitted Maximum Height of Buildings. The grounds put forward by Stockland under the heading of "Justification" demonstrate that the primary aim of the Proposal is to improve the commercial outcome for the proponent by squeezing more units onto the site. Nowhere has Stockland attempted to justify the change on the grounds normally required to grant such relief.

The 'justifications' for relief presented by Stockland are not such as would satisfy those grounds and are not specific to the Lourdes site, and if the change in height were to be accepted on the basis proffered, the result would be to effectively dismantle Council's Height of Buildings Development Standard. (see par 79 of the judgement by Preston CJ in the Land and Environment Court in *Wehbe v Pittwater Council* December 2007)

Residents maintain therefore that for reasons of good public policy as well as the safety and wellbeing of residents during a bushfire evacuation, the Planning Proposal should be rejected.

RFS Bushfire Evacuation Risk Map
Detail from KLEP 2015
Showing fire hazard exposure over Stanhope Rd

