

OBJECTION TO DRAFT  
OXFORD FALLS AND  
BELROSE NORTH  
STRATEGIC REVIEW

**Lots 1059, 1068 and 1071  
Spicer Road South  
Oxford Falls**

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## 1.0 INTRODUCTION

This submission has been prepared for Mr M. Nowytarger, Mr J. Spiegel and Mr S. Williams by Gary Shiels & Associates Pty Ltd – (hereafter referred to as GSA Planning). GSA Planning has expertise in Urban Design, Environmental & Traffic Planning.

This submission to Warringah Council is an objection to the proposed E3 Environmental Management zone in the Draft Oxford Falls Valley and Belrose North Strategic Review for Lots 1059, 1068 and 1071 Spicer Road South, Oxford Falls (hereafter referred to as Lots 1059, 1068 and 1071, respectively, and the “subject site”, collectively). The E3 zone is totally inappropriate for the subject site as these properties are largely cleared of vegetation and do not exhibit any characteristics or qualities of this zone.

In our submission, the proposed zoning is inappropriate for the following compelling reasons:

1. This is not the correct zone for the subject site;
2. Inaccuracy of the site constraints - the subject sites are mostly cleared and do not contain any significant or special ecological vegetation;
3. Proposed zoning based on inaccurate site constraints mapping;
4. The E3 Zone is inconsistent with Warringah LEP 2000;
5. The proposed zoning is inconsistent with the existing uses - our client's would have to rely on existing use rights to develop their land; and,
6. There are more appropriate zonings for the subject site.

Our submission is supported by an expert ecological Report prepared by Kevin Mills & Associates.

On the basis of the above, the E3 zoning is not appropriate and Council should consider zoning the subject site RU4 Primary production Small Lots, or alternatively R5 Large Lot Residential.

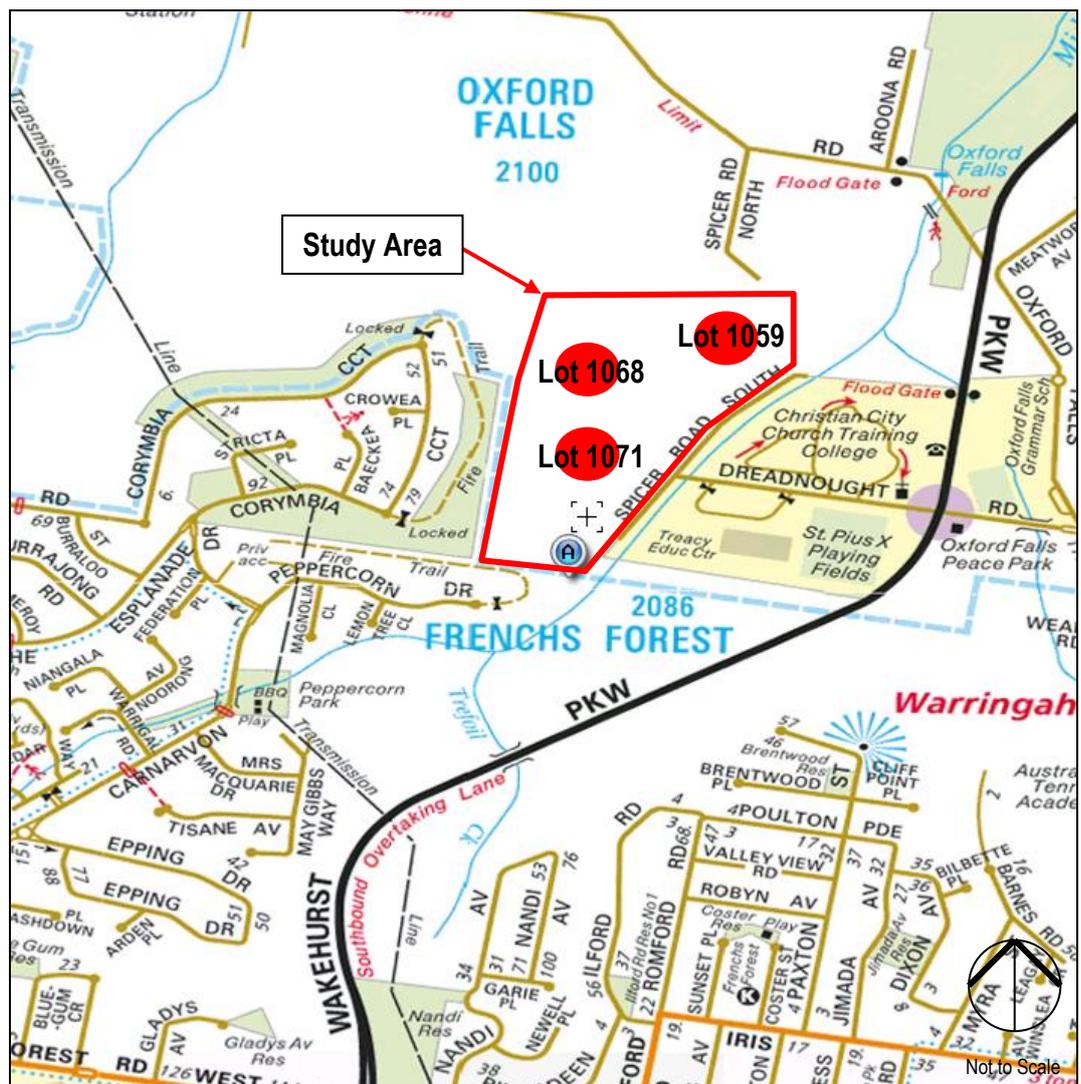
In the following sections we will provide a brief site analysis, a description of the existing and proposed statutory controls, our justification for the proposed variation to the draft zoning, and a conclusion.

## 2.0 SITE ANALYSIS

This section will contain a description of the following: The Locality; The Site; Topography; Existing Built Form; Existing Landscaping; The Character and Context; and Surrounding Road Network.

### 2.1 The Locality

The subject site is located approximately 22km north of the Sydney GPO, 5.5km from Warringah Mall, 4km from Forestway Shopping Centre Warringah, and approximately 1km from a new hospital being constructed on the corner of Warringah Road and the Wakehurst Parkway. The site is located within the local Government Area (LGA) of Warringah (see Figure 1).



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Figure 1:  
Location Map

## 2.2 The Study Area

This submission is made on behalf of the owners of Lot Nos. 1059, 1068 and 1071 Spicer Road South, Oxford Falls. Collectively, these three properties are hereafter referred to as the subject site. In our opinion, it makes planning sense to include all of the properties along Spicer Street South in this submission as they have similar attributes to our client's properties. Accordingly, the study area comprises six allotments on the eastern and western side of Spicer Road South. Properties along Spicer Road North have not been included in this submission as they are part of a separate Report.

The study area comprises Lots 1059, 1066, 1068, 1070, 1071 and 1073 Spicer Road South. These properties are rural residential lots and are largely cleared of bushland.

## 2.3 The Subject Site

The subject site comprises three allotments including Lot Nos. 1059, 1068 and 1071 Spicer Road South, Oxford Falls (see Figure 2 below and Figure 3 on page 4).



Source: Google Maps

 Study Area



Lot 1059 is located on the eastern side of Spicer Road South and is an irregular shaped parcel of land with an approximate area of 1.54 hectares. Lot 1068 is located on the western side of Spicer Road, to the south west of Lot 1059. Lot 1068 is an irregular shaped parcel of land and a site area of approximately 2.35 hectares. Lot 1071 is located on the western side of Spicer Road South, immediately to the south of Lot 1068. Lot 1071 is a trapezoidal parcel of land and has a site area of approximately 2.3 hectares.



Source: Google Maps

 Study Area



Not to Scale

**Figure 3: Aerial View**

## 2.4 Existing Built Form

**Lot 1059** is a large rural residential property occupied by a single storey dwelling that is currently under construction (see Photograph 1). Other improvements on the site include an older dwelling, which is to be demolished (see Photograph 2). The site is used for residential and agricultural purposes. The land is mostly cleared. The Hardstand Plan submitted for Lot 1059 Spicer Road South (DA No. 2011/0697) indicates a small section of remnant gully forest along the western boundary and a pocket of casuarinas on the south eastern corner. The site also contains a small number of alpacas (see Photographs 3 and 4).



**Photograph 1:** Existing dwelling on Lot 1059



**Photograph 2:** Other improvements on Lot 1059



**Photograph 3:** Cleared land at Lot 1059



**Photograph 4:** Cleared land and alpacas at Lot 1059

**Lot 1068** is a large rural residential property occupied by a single storey dwelling (see Photograph 5). Other improvements on the site include a car port, small shed and two larger sheds (see Photograph 6). The site is used for residential and commercial purposes. The land is completely cleared with a few indiscriminate species scattered around the site (see Photograph 7). To the rear of the site is a parcel of Crown land. The south eastern corner of the Crown parcel is completely cleared (see Photograph 8).



**Photograph 5:** Existing dwelling on Lot 1068



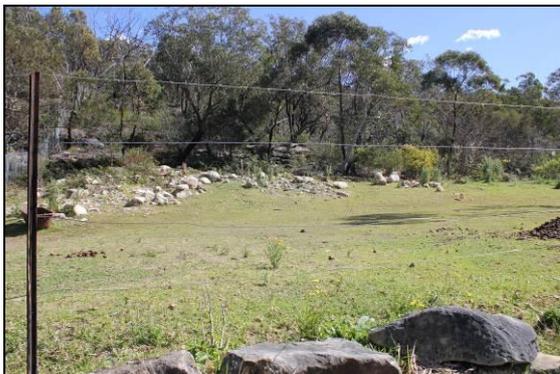
**Photograph 6:** Other improvements on Lot 1068



**Photograph 7:** Cleared land at Lot 1068 looking east



**Photograph 8:** Cleared land at Lot 1069 looking west



**Photograph 9:** Crown Land to the west of Lot 1068



**Photograph 10:** Crown Land to the west of Lot 1068

**Lot 1071** is a large rural residential property occupied by a two storey primary dwelling and single storey secondary dwelling (see Photographs 11 and 12). Other improvements on the site include a small shed, a large shed, a horse stable for 16 horses, a swimming pool and a dam (see Photographs 13 and 14). The land is largely cleared with approximately 10 per cent of the site containing bushland (see Photographs 15 and 16).



**Photograph 11:** Existing dwelling on Lot 1071 as viewed from the rear of Lot 1068.



**Photograph 12:** Secondary dwelling on Lot 1071.



**Photograph 13:** Shed and horse stable on Lot 1071.



**Photograph 14:** Dam and horse stable on Lot 1071.



**Photograph 15:** Cleared land and existing structures on Lot 1071 looking west.



**Photograph 16:** The only bushland at the rear Lot 1071 looking west (approx. 10%).

## 2.5 Existing Character and Context

As indicated, the study area comprises rural residential allotments containing dwellings, agricultural land and some commercial operations. The area surrounding the study area comprises a mixture of rural residential allotments, residential subdivisions, community uses and sport and recreational uses. Middle Creek runs north to south along the Spicer Road alignment.

### 2.5.1 Development to the North

To the north of Lot 1059 is Lot 1058, which is a large rural residential property comprising a dwelling, swimming pool and a number of sheds. Further to the north at Lot A Spicer Road north is a large property comprising a dwelling, swimming pool, sheds, dam and equestrian centre.

To the north of Lot 1068 is Lot 1066, which forms part of the study area. Lot 1066 comprises a dwelling, a number of sheds and a dam in the rear of the property. Lot 1066 is largely cleared with a few indiscriminate species scattered around the property.

### 2.5.2 Development to the East

To the east, on the opposite of Spicer Road South are C3 Church (34 Wakehurst Parkway), St Pius X College and playing fields (1 Dreadnought Rd, Oxford Falls) and Oxford Falls Grammar School (1078 Oxford Falls Road). These sites have been extensively cleared to accommodate building structures, car parks, sheds and fields.

### 2.5.3 Development to the South

To the south of Lots 1068 and 1071 are Lots 1072 and 1073, which form part of the study area. Lot 1072 comprises a single storey dwelling above garage and a granny flat with manicured lawns (see Photographs 17 and 18). Lot 1072 is largely cleared of vegetation with the exception of some bushland atop the escarpment at the rear of the property (see Photograph 19). Further to the south is Lot 1073, which is occupied by a rock quarrying business and a dwelling (see Photograph 20). Further to the south is a residential subdivision (see Photographs 20 and 21).



**Photograph 17:** Existing dwelling on Lot 1072.



**Photograph 18:** Landscaping on Lot 1072.



**Photograph 19:** Cleared land and escarpment on Lot 1072.



**Photograph 20:** Rock quarry at Lot 1073.



**Photograph 21:** The rear of a residential subdivision to the south.



**Photograph 22:** The rear of a residential subdivision to the south.

### 2.5.4 Development to the West

To the west are a residential subdivision and the Oxford Falls Regional Crown Reserve which contains bushland (see Photographs 23 and 24).



**Photograph 23:** The rear of a residential subdivision to the west.



**Photograph 24:** The rear of a residential subdivision to the west.

## **3.0 EXISTING AND PROPOSED PLANNING CONTROLS**

### **3.1 Warringah Local Environmental Plan 2011**

The Warringah Local Environmental Plan (LEP) 2011 was gazetted 9 December 2011 in accordance with the State Government's *Standard Instrument (Local Environmental Plans) Order 2006*, which requires local Councils to implement a 'Standard Instrument' LEP. Certain parts of Warringah are not covered by the new LEP 2011, including land in the B2 Oxford Falls Valley and C8 Belrose North localities. These areas have been 'deferred' by the State Government and will remain under the provisions of LEP 2000 until a review of deferred lands is complete and a planning proposal is approved to amend WLEP 2011. The subject site is located in the B2 Oxford Falls Valley locality and LEP 2000 therefore applies.

### **3.2 Warringah Local Environmental Plan 2000**

The Warringah LEP 2000 was gazetted on 5 December 2000 and applies to the subject site and the study area, which is located in the B2 Oxford Falls Valley locality. The desired future character of Oxford Falls includes new detached style housing and low intensity, low impact uses. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings should be designed to blend with the colours and textures of the natural landscape.

Under the LEP 2000, Category One and Two development will have a minor environmental impact and will not, to any significant extent, alter the bulk, size or scale of any existing building or existing land use. Category Three development will have a greater impact and would be subject to an independent public hearing and assessment.

The LEP 2000 permits a variety of uses including agriculture, housing and housing for older persons or people with a disability (on land that adjoins urban land) as Category Two development in B2 Oxford Falls. Animal boarding or training establishments; bulky goods shops; business premises; child care centres; community facilities; entertainment facilities; further education; health consulting rooms; heliports; hire establishments; hospitals; hotels; industries; medical centres; motor showrooms; offices; places of worship; primary schools; recreation facilities; registered clubs; restaurant; retail plant nurseries; service stations; shops; short term accommodation; vehicle repair stations; veterinary hospitals; and warehouses are permitted with consent as Category Three developments.

The Locality Statement requires a building density of not more than one dwelling per 20ha with a building height limit of 8.5m and wall height of 7.2m.

The subject site does not contain acid sulphate soils. Council's mapping system identifies the site as containing flood prone land and bushfire prone land requiring a vegetation buffer.

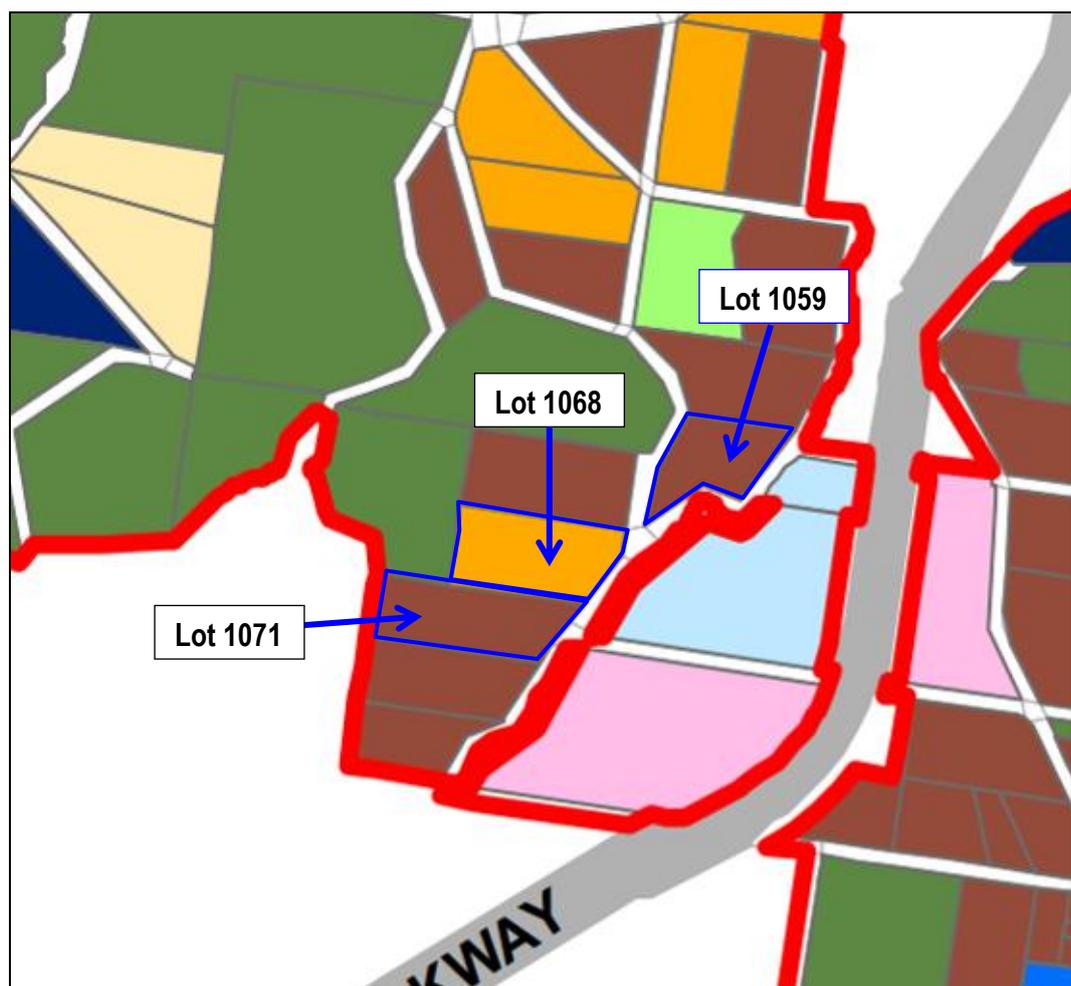
### **3.3 Draft Oxford Falls Valley and Belrose North Strategic Review**

Warringah Council and the Department of Planning and Infrastructure (DoPI) have undertaken a review of Deferred Land for Oxford Falls Valley. The review will allow Oxford Falls Valley to be translated into Warringah's standard LEP.

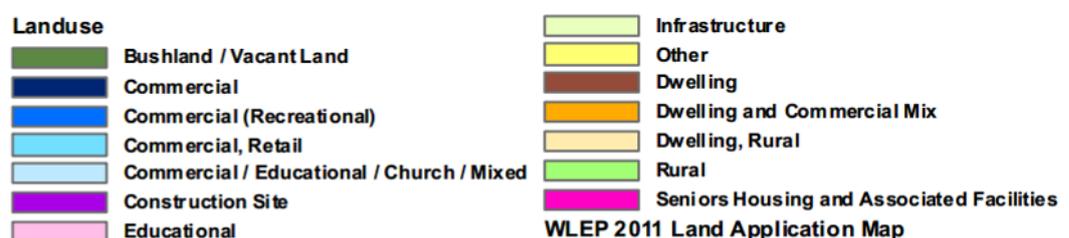
Under the draft LEP 2011, B2 Oxford Falls Valley was proposed to be zoned E3 Environmental Management. Following a number of submissions against the E3 zoning, the Minister for Planning and Infrastructure resolved to defer Oxford Falls Valley and the locality would remain under the LEP 2000.

In June 2012, Council resolved to undertake a joint strategic review with DoPI of the Oxford Falls Valley (and Belrose North) locality. That review is the Draft Oxford Falls Valley and Belrose North Strategic Review, dated April 2013 and on exhibition until 30 August 2013.

The Strategic Review contains a Land uses Analysis, which identifies the land uses of properties throughout the Oxford Falls Valley and North Belrose localities. Lots 1059 and 1071 are identified as a dwelling land use. The land use of Lot 1068 is a dwelling and commercial mix. The remainder of the study area has a dwelling land use. No allotment in the study area is identified as bushland.

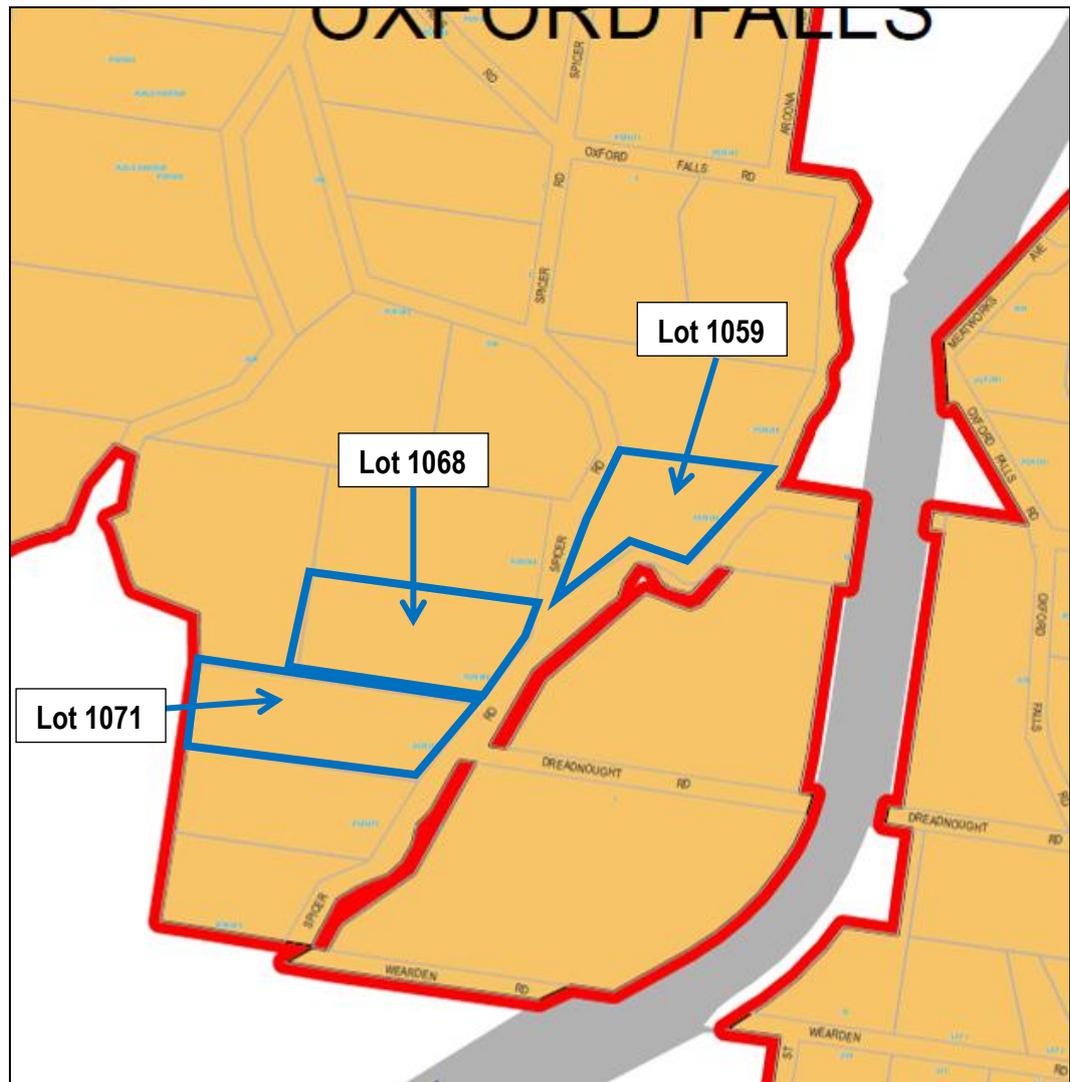


Source: Draft Oxford Falls Valley and Belrose North Strategic Review, April 2013



**Figure 4: Land Use Analysis**

Under the Strategic Review, the subject sites and the study area are designated to be E3 Environmental Management (see Figure 5).



Source: Draft Oxford Falls Valley and Belrose North Strategic Review, April 2013

<b>Draft Land Zones</b>		 R5 Large Lot Residential
 E3 Environmental Management	 RU4 Primary Production Small Lots	
 R2 Low Density Residential	 SP2 Infrastructure	



**Figure 5:  
Draft Zoning Plan**

The objectives of the E3 zone are stated, inter alia:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.
- To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.
- To protect and enhance visual quality by promoting dense bushland buffers adjacent to major traffic thoroughfares.

The objectives place a strong emphasis on preserving areas with ecological, scientific, cultural or aesthetic values, enhancing the natural environment and conserving remnant bushland. The subject sites and indeed the study area are largely cleared and do not contain significant areas of bushland or areas with ecological, scientific, cultural or aesthetic values. This is confirmed and discussed in detail in Section 4.0 of this submission. In our opinion, the subject site and study area as existing would not be able to satisfy the objectives of the E3 zone. In our opinion, the proposed zone is therefore inappropriate.

Under the E3 zone, development for the purposes of aquaculture; bed and breakfast; accommodation; building identification signs; business; identification signs; community facilities; dwelling houses; emergency services facilities; environmental facilities; environmental protection works; extensive agriculture; farm buildings; home businesses; home industries; horticulture; recreation areas; and roads are permitted with consent.

Development for the purposes of industries; multi dwelling housing; residential flat buildings; retail premises; seniors housing; service stations; warehouse or distribution centres; or any other development are not specified above.

Under the LEP 2011, extensive agriculture means, inter alia:

- a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- b) the grazing of livestock for commercial purposes,
- c) bee keeping,
- d) a dairy (pasture-based).

The E3 zoning does not permit commercial premises or intensive livestock agriculture (which means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses or other livestock that are fed wholly or substantially on externally-sourced feed, and includes dairies (restricted), feedlots, piggeries, poultry farms but does not include extensive agriculture, aquaculture or the operation of facilities for drought or similar emergency relief). That is, the existing land uses on Lots 1068 and 1071, commercial and horse stabling would not be permissible in the zone.

The key development standards will remain as existing, with a maximum housing density of one dwelling per 20ha of site area and maximum building height of 8.5m.

## 4.0 OTHER RELEVANT STUDIES

The Strategic Review has been on exhibition from June 2013 and submissions have been welcomed as part of the planning process. During the exhibition period, other relevant studies have been undertaken by interested parties, including the Warringah Urban Fringe Association and Kevin Mills & Associates. These will now be discussed.

### 4.1 Warringah Urban Fringe Association

The Warringah Urban Fringe Association (WUFA) made a Submission to the E3 Strategic Review on 7 August 2013. This submission followed earlier submissions made by WUFA prior to the Draft Strategic Review being prepared.

WUFA advocates the views of 152 landowners in the Strategic Review Study Area and submit that the E3 zoning is not appropriate for their land on the following grounds:

- Desired future character;
- Objectives of E3 not followed;
- Translation not based on LEP 2000 – agricultural focus missed;
- Seniors housing not translated properly;
- Environmental constraints not applied logically;
- Inaccuracy of constraints;
- Inaccuracy of the site analyses;
- Data used has not been presented to council or adopted;
- Data not based on scientific research;
- Data not from robust data sources and analysis;
- Proximity to key centres; and,
- Land identified as non-urban in the Draft North East Subregional Strategy

In the Executive Summary, the WUFA submission states inter alia:

“We feel the strategic review has correctly zoned the properties shown as SP2, RU4 and R5, but has incorrectly zoned some properties as E3 which should have been RU4.”

The WUFA submission included a zoning map showing proposed their proposed zonings for the Strategic Review Area. The subject site is proposed by WUFA to be RU4 (see Figure 6 on the following page).

### 4.2 Report by Kevin Mills & Associates Ecological and Environmental Consultants

Kevin Mills of Kevin Mills & Associates Ecological and Environmental Consultants inspected the subject site and prepared an ecological report to the Strategic Review. Kevin Mills & Associates investigated the environmental attributes of the land and provided an opinion on the suitability of the proposed E3 zone for the subject sites.

The Report notes that Lot 1059 is about 90 per cent cleared. The remainder is a strip of modified bushland along the western edge of the lot and there is a line of planted River Oak trees near the creek boundary in the east. The percentage bushland on this lot is probably about 10 per cent, although Council’s Site Analysis Sheet completed on 11 December 2012 implies the proportion of the lot that is not cleared is 40 per cent.

The Report notes that Lot 1068 has been almost entirely cleared of bushland in the distant past with some scattered remnant local trees of Scribbly Gum, Smooth-barked Apple and Sydney Peppermint. The percentage bushland on this lot is nil; this contrasts with Council's Site Analysis Sheet completed on 11 December 2012, which implies a bushland cover of 30 per cent.

The Report notes that the rear of Lot 1071 still supports modified bushland about 19 metres in width and represents an area of bushland of less than 10 per cent. This is well short of the estimate made on Council's Site Analysis Sheet on 11 December 2012, which implied a bushland cover of 50 per cent.

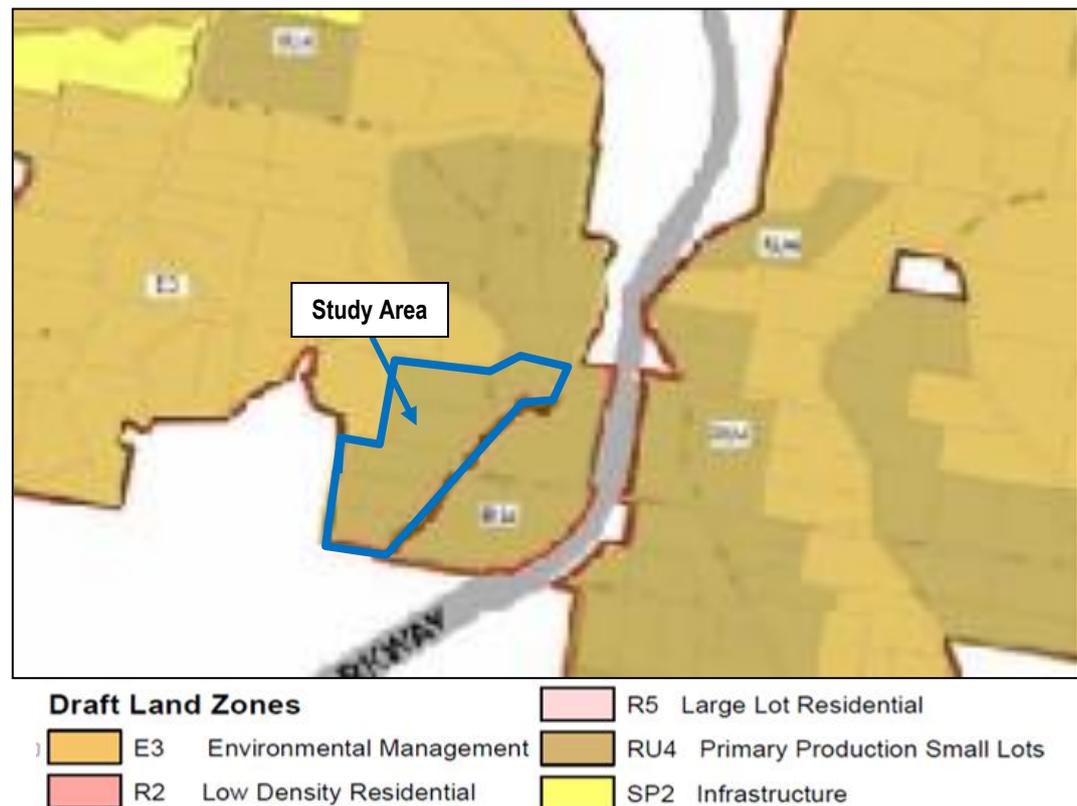
The Report concludes, inter alia:

"This paper has reviewed the proposal to zone certain land at Oxford Falls as E3 – Environmental Management. The *Strategy Review* document proposes a blanket use of this zone over a large area around Oxford Falls, seemingly irrespective of current land use and environmental values.

After inspecting the subject properties, it is our view that the majority of the land contained on the three properties is not "significantly constrained by environmental factors". In fact, the only area of bushland with any real habitat value is the strip at the back of Lot 1071, which adjoins bushland to the west.

Although we are not claiming to be town planners, it seems to us that one or more of the Rural zones would be more appropriate for much of the Oxford Falls land. We have no disagreement with an E3 zoning over land that clearly has high environmental value such as natural bushland, or indeed for other land that, although disturbed/partly cleared, may form useful buffers or corridors that supplement bushland areas. This is not the case with the subject lots."

A copy of the Report from Kevin Mills & Associates has been submitted separately.



**Figure 6: WUFA Draft Zoning Plan**

## 5.0 REASONS FOR THE OBJECTION

This submission to Warringah Council is an objection to the proposed E3 Environmental Management zone in the Draft Oxford Falls Valley and Belrose North Strategic Review on the basis that the zone is totally inappropriate for the subject sites. These properties are largely cleared of vegetation and do not exhibit the characteristics or qualities of the E3 zone.

In our opinion, there are a number of compelling planning reasons to support our findings that the E3 zone is not appropriate. Our reasons for objecting to the proposed E3 zone are as follows:

1. This is not the correct zone for the subject site;
2. Inaccuracy of the site constraints - the subject sites are mostly cleared and do not contain any significant or special ecological vegetation;
3. Proposed zoning based on inaccurate site constraints mapping;
4. The E3 Zone is inconsistent with Warringah LEP 2000;
5. The proposed zoning is inconsistent with the existing uses - our client's would have to rely on existing use rights to develop their land; and,
6. There are more appropriate zonings for the subject site.

### 5.1 This is not the correct zone for the subject site

The E3 zone is not the correct zone for the subject site or the study area. The E3 zone is to be applied to land that has special ecological, scientific, cultural or aesthetic attributes, or land highly constrained by geotechnical or other hazards. This zone might also be suitable as a transition between areas of high conservation value and other more intensive land uses.

The subject site does not contain areas with special ecological, scientific, cultural or aesthetic values. Future development on the subject site would not affect those values as they are not characteristic of the subject site. The cleared land on the subject site is inconsistent with the E3 zoning. This has been supported in a Report by Kevin Mills & Associates, which states, *inter alia*:

“We cannot comment upon infrastructure factors, but in terms of environmental factors, we contend that the cleared parts of the three lots in question, and indeed much of the cleared and highly developed land adjoining and in the vicinity of these areas, is inconsistent with the objectives of the E3 zone.”

The E3 zone also aims to promote dense bushland buffers adjacent to major traffic thoroughfares. The subject site is not located on a major traffic and this objective therefore does not apply.

The Strategic Review makes reference to the LEP Practice Note 09-002, which provides guidance to Councils on the environment protection zones in the standard instrument and where that zone might apply. The Practice Note states that the following are examples of where the E3 zone may be applied:

- Areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover.
- As a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential.

- Where rehabilitation and restoration of its special environmental qualities are the primary purpose.
- Highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment.

The Practice Note also states, inter alia:

“There are instances where environmentally significant land has been zoned rural in the past but has not been used primarily for agriculture. Such lands should be zoned E3.

However, the zone is generally not intended for cleared lands including land used for intensive agriculture.”

As indicated, the site does not contain ecological, scientific, cultural or aesthetic attributes, high conservation value land, special environmental qualities or highly constrained land. The land is largely cleared and has been used for rural and other uses. The E3 zone therefore does not apply to the subject site in accordance with Practice Note 09-002.

## 5.2 Inaccuracy of the site constraints

In discussions with the DoPI, we were advised that site inspections and desk top studies were undertaken by the Council and DoPI in December 2012 and Site Analysis certificates were issued to property owners in the Oxford Valley and Belrose North localities.

The Council and DoPI site analysis for Lot 1059, also dated 11 December 2012, indicates that the site contains a dwelling and agriculture as well as bushland and cleared paddocks. The site analysis estimates that Lot 1059 contains 60 per cent cleared land. The analysis also indicates that the site has been cleared for the construction of the dwelling.

The Council and DoPI site analysis for Lot 1068, also dated 11 December 2012, indicates that the site contains a dwelling and commercial premises as well as bushland and cleared paddocks. The site analysis estimates that Lot 1068 contains 70 per cent cleared land.

The Council and DoPI site analysis for Lot 1071, dated 11 December 2012, indicates that the site contains a dwelling and agriculture as well as bushland and cleared paddocks. The site analysis estimates that Lot 1071 contains 50 per cent cleared land.

These estimates are not based on scientific research but rather on desk top studies and inspections that were carried out nine months ago. Our own site inspections and photographs taken on 21 August 2013 indicate that Lot 1059 is 90% cleared and Lot 1068 is 100 per cent cleared, with a few indiscriminate species scattered around (see Photographs 26 to 33). Lot 1071 is approximately 90 per cent cleared with a small area of bushland located at the rear of the property on the escarpment and some trees along the front (eastern) boundary (see Photographs 34 to 36). Council’s estimates are considerably lower than our more recent site inspections (see Table 1) We note that Lot 1072 is also 100 per cent cleared (see Photographs 17 to 19).

<b>Lot Number</b>	<b>Council Estimates – Dec 2012</b>	<b>GSA/K.Mills Estimates – Aug 2013</b>
Lot 1059	60%	90%
Lot 1068	70%	100%
Lot 1071	50%	90%



**Photograph 26:** Cleared land at Lot 1059



**Photograph 27:** Cleared land at Lot 1059



**Photograph 28:** Cleared land at Lot 1059



**Photograph 29:** Cleared land at Lot 1059



**Photograph 30:** Cleared land at Lot 1068 looking east



**Photograph 31:** Cleared land at Lot 1068 looking east



**Photograph 32:** Cleared land at Lot 1068 looking west



**Photograph 33:** Cleared land at Lot 1068 looking west



**Photograph 34:** Cleared land on Lot 1071 looking north west



**Photograph 35:** Cleared land and some vegetation on Lot 1071 looking east.



**Photograph 36:** Cleared land and existing structures on Lot 1071 looking west.

These estimates have been confirmed in a report prepared by Kevin Mills & Associates Ecological and Environmental Consultants dated 29 August 2013. The Report states, inter alia:

“Inspection of the subject lots readily finds that little of the land is naturally vegetated. As noted above, the three lots have a long history of rural and other uses and bushland has not existed on the majority of the land for a very long time. Bushland occurs on no more than 10% of Lot 1059 and less than 10% of Lot 1071, and not at all on Lot 1068.

The land at the front of Lots 1068 and 1071 supports almost entirely planted non-local trees, yet it is identified as being ‘severe or significantly constrained’, the same classification as vast areas of natural bushland elsewhere in the locality.”

In our opinion and the opinion of Kevin Mills & Associates Ecological and Environmental Consultants, the site analysis information prepared by Council and the DoPI is inaccurate and does not reflect the existing and actual percentage of cleared land in the study area.

Accordingly, in our opinion, Council and DoPI’s proposed E3 zoning is not appropriate for the sites in the study area as the land is cleared of bushland and significant vegetation.

### **5.3 Proposed zoning based on inaccurate constraints mapping**

In preparing the Strategic Review, Council and DoPI applied a four step methodology to determine a “best fit” zone for land in the study area. Step 1 identifying land that was significantly constrained. Step 2 involved identifying sites that weren’t significantly constrained but would have a significant cumulative impact if up-zoned. Step 3 involved a secondary environmental assessment to eliminate additional constrained sites. Step 4 examined the remaining sites on a site by site basis.

The methodology used is based on the Warringah Council (2007) Planning Report Oxford Falls Valley Assessment of Rezoning/Development Proposals. Anecdotal evidence from our clients suggests that the Planning Report 2007 indicates that no significant environmental constraints were identified on the subject properties.

Council and DoPI have since prepared constraints analyses that conflict with the mapping done in 2007. The mapping identifies the following constraints; riparian; significant vegetation; wetland buffers; slope; designated wildlife corridor or core habitat; flooding; acid sulphate soils; and threatened species habitat. The Primary Environmental Constraints Map contained in the Strategic Review identifies the study area as having a moderate to severe level of environmental constraint to development. Throughout this report and in the Report prepared by Kevin Mills, it has been stated that the subject sites are largely cleared and do not contain the above qualities that would constrain development and warrant an E3 zoning. In our opinion, the mapping used in the Strategic Review is inaccurate and not based on current site conditions.

#### **5.4 E3 Zone is inconsistent with Warringah LEP 2000**

The desired future character of Oxford Falls under the LEP 2000 includes new detached style housing and low intensity, low impact uses with buildings to be located and grouped in areas. This would suggest that the desired future character of the locality is residential in nature and potentially intends residential subdivisions. Residential subdivisions are not typically commensurate with environmental protection zones. On this basis, an R2 zone would be a more accurate direct translation of the LEP 2000.

The desired future character of Oxford Falls under the LEP 2000 also includes the protection, and where possible, enhancement, of the natural landscape, landforms and vegetation. A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. As the subject site is not located along Forest Way and Wakehurst Parkway, the objective for a buffer does not apply. Furthermore, the sites in the study area are cleared with little or no natural or significant vegetation.

The objectives of the E3 zone under the LEP 2011 place a strong emphasis on preserving areas with ecological, scientific, cultural or aesthetic values, enhancing the natural environment and conserving remnant bushland. As indicated, the study area is largely cleared and does not contain significant areas of bushland or areas with ecological, scientific, cultural or aesthetic values. As discussed, this has been confirmed in an ecological study prepared by Kevin Hills & Associates. In our opinion, the objectives of the E3 zone are not appropriate for the subject site and the study area. In our opinion, the proposed E3 zone is therefore inappropriate.

#### **5.5 The proposed zoning is inconsistent with the existing land uses**

The E3 zone will create a situation where existing permissible uses are no longer permitted on the land. This creates an anomaly in the planning system and is not desirable from a planning point of view. Under the E3 zone, the subject sites will contain prohibited uses, including commercial and extensive agriculture.

The Strategic Review states that every effort has been made to eliminate the number of non-conforming uses under the new E3 zone. However, Council acknowledges that there will be a small number of non-conforming land uses as a result of the recommended zoning and that these properties will need to rely on existing use rights under the Environmental Planning and

Assessment Act, 1979 (EP&A Act) and the Environmental Plan and Assessment Regulations, 2000 (EP&A Regulations).

In our opinion, Council should remove the E3 zoning for the subject site as it is inconsistent with the existing land uses.

## **5.6 There are more appropriate zonings for the subject site**

The proposed zoning and objectives of the subject site under the Strategic Review do not reflect the existing uses of the sites in the study area. They also do not reflect that the sites are considerably cleared and do not contain significant bushland.

Accordingly we respectfully request that Council and the DoPI zone the subject site RU4 Primary Production Small Lots. The RU4 Primary Production Small Lots zone is intended for land which is to be used for commercial primary industry production. The objectives of the RU4 zone are stated inter alia:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.
- To maintain and enhance the natural landscape including landform and vegetation.
- To ensure low intensity of land use other than land uses that are primary industry enterprises.
- To maintain the rural and scenic character of the land.

Development for the purposes of animal boarding or training establishments; aquaculture; bed and breakfast accommodation; building identification signs; business identification signs; child care centres; community facilities; dwelling houses; environmental protection works; extensive agriculture; farm buildings; home businesses; home industries; intensive plant agriculture; landscaping material supplies; plant nurseries; recreation areas; respite day care centres; roads; roadside stalls; rural supplies; veterinary hospitals.

We would also request Council consider additional permitted uses in the RU4 zone to allow commercial uses and intensive livestock agriculture.

A RU4 zoning for the subject site would be consistent with the existing commercial primary industry uses and dwellings on site. Anecdotal evidence from a Submission to the E3 Strategic review Draft Report prepared by Warringah Urban Fringe Association, dated 7 August 2013, suggests that the original draft zoning map from LEP 2011 identified the subject site as RU4.

We note that the Draft Land Use Zoning Map zones properties on Wyatt Avenue, Belrose (on the western side of Forest Way) as RU4. We understand that this proposed zoning followed a submission to Council that included an expert report justifying the RU4 zoning on the basis that E3 was not appropriate.

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Alternatively, although the LEP 2011 does not contain the R5 zone, Council could consider this an appropriate zoning for the sites in the study area. The objectives of the R5 zone under the Standard Instrument template are stated, inter alia:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Accordingly, having regard to the existing site conditions, zoning, uses on site and the information available at the time of preparing this Report, in our opinion, an RU4 or R5 zone would be more appropriate. Subject to further investigation, given the proximity of the subject site to residential areas, educational establishments, hospitals (new hospital approximately 1km away) and centres, a more intensified zoning could be appropriate in the future.

## 6.0 CONCLUSION

In conclusion, and in our respectful opinion, there are compelling planning reasons for Council and the DoPI not to support zoning the subject site and the study area E3 under the LEP 2011.

The site does not contain ecological, scientific, cultural or aesthetic attributes, high conservation value land, special environmental qualities or highly constrained land. The land is largely cleared and has been used for rural and other uses. The E3 zone therefore does not apply to the subject site and is inconsistent with Practice Note 09-002.

The Council and DoPI Lot 1059 as 60 per cent cleared land, Lot 1068 at 70 per cent and Lot 1071 at 50 per cent. Our own site inspections indicate that Lot 1059 is 90 per cent cleared, Lot 1068 is 100 per cent cleared and Lot 1071 is 90 per cent cleared, which is a considerably higher percentage than estimated by Council's inspections and desk top studies. This has been confirmed by Kevin Mills & Associates Ecological and Environmental Consultants.

The constraints mapping contained in the Strategic Review identifies the study area as having a moderate to severe level of environmental constraint to development. This is inaccurate as the subject sites are largely cleared and do not contain qualities that would constrain development and warrant an E3 zoning.

The objectives of the E3 zone under the LEP 2011 place a strong emphasis on preserving areas with ecological, scientific, cultural or aesthetic values, enhancing the natural environment and conserving remnant bushland. The study area is largely cleared and the objectives of the E3 zone are not appropriate for the subject site. Furthermore, the E3 zoning is inconsistent with the existing land uses on site.

The above has been supported in an independent investigation by Kevin Mills of Kevin Mills & Associates Ecological and Environmental Consultants.

Having regard to the above, in our opinion, the E3 zone should be removed for the subject site and an RU4 or R5 zone considered. Given the proximity of the subject site to residential areas, educational establishments and centre, and subject to further investigation, a more intensified zoning could be appropriate in the future.

We would welcome the opportunity to discuss our submission with Council and the DoPI and we look forward to actively being part of the strategic process. Should you have any queries or require further information please do not hesitate to contact our office.