

30 August 2013

The Project Control Group  
Oxford Falls Valley & Belrose North Strategic Review  
Department of Planning and Infrastructure  
GPO Box 39  
Sydney NSW 2001

**To Whom It May Concern**

We are private landowners in Oxford Falls whose properties are proposed for E3 Environmental Management zoning. The owners and properties represented by this submission are:

- Richard and Sandra Chapman, Lot 1040 DP 752038
- Heidi Schnider, Lot 1041 DP 752038
- Harry and Anna Janakis, Lot 1042 DP 752038
- Barry and Glynnis Condon, Lot 1 DP 504480
- Stuart and Julia Davey, Lot 2 DP504480
- Peter Harper, Lot A DP368812

We consider that the site analyses of our properties, carried out on behalf of the project control group of the OFBN Review, are highly inaccurate, which may have very serious economic and lifestyle consequences for us in the future.

We seek to have this remedied, and to that end have commissioned a study by an expert ecologist, Dr David Robertson of Cumberland Ecology, whose assessment is attached to this letter.

We ourselves consider that the processes used to deem our properties as requiring Environmental Management zoning is deeply flawed and we consider our concerns are supported by Dr Robertson's assessment.

Signed on behalf of, and with the approval of the owners listed above,

Glynnis Condon

30 August 2013

Various Land Owners

OXFORD FALLS NSW 2100

**OXFORD FALLS PROPERTIES - FLORA AND FAUNA ASSESSMENT AND  
LEGISLATIVE APPLICATION**

To Whom It May Concern,

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Cumberland Ecology understands that Warringah Council have exhibited proposed new land use zones, covering all of the land within Oxford Falls. Under the draft zoning, all such land is proposed to be zoned from B2 as E3 for Environmental Management.

As you requested, the purpose of this letter is to review the validity of the proposed zoning for a suite of lots within Oxford Falls as listed below and collectively referred to as "the subject sites":

- Lot 1040 DP 752038 (approx 2.041 ha);
- Lot 1041 DP 752038 (approx 2.222 ha);
- Lot 1042 DP 752038 (approx 2.227 ha);
- Lot 1 DP 504480 (approx 2.004 ha);
- Lot 2 DP 504480 (approx 1.362 ha); and
- Lot A DP 368812 (approx 2.315 ha).

The findings of my review are set out below:

## **1. Background**

Land within Oxford Falls comprises rural lots with an average lot size of about 2 ha, though some are as small as 0.313 ha. The location of the subject sites is shown in Figure 1 below.



## 2. Method

### 2.1 Desktop Assessment

The definition of the E3 Environmental Management zone was reviewed so as to understand the characteristics of land that would make it eligible and suitable for the application of this zoning.

A review was made of the relevant sections of the primary source document that the zoning is based upon as follows:

***Draft Oxford Falls Valley & Belrose North Strategic Review.*** NSW Planning and Structure and Warringah Council (April 2013).

Raw data sheets from the field inspections carried out on behalf of Department of Planning and Infrastructure and Warringah Council and dated 11/12/2012 were examined to see that what the Council had found about the environmental values of each of the subject sites.

As part of the review, current aerial photography was examined so as to study the condition and context of vegetation on the subject sites.

Available mapping from the Warringah Council concerning land use and environmental constraints were also examined in order to assess both the environmental constraints on the subject sites, as mapped by Council, and that of the surrounding land. The maps examined included:

- Environmental Constraint Land Map (Warringah Council 2006-07);
- Cleared Land Map (Warringah Council 2006); and
- Cumulative Level of Environmental Constraint (DOPI & Warringah Council 2013).

A database analysis was conducted for the locality using the NSW Office of Environment and Heritage (OEH) Atlas of NSW Wildlife (OEH 2013) to determine the types of threatened species and ecological communities that may occur within the subject site. The Atlas of NSW Wildlife search recovered records of threatened flora and fauna species and EECs listed under the TSC Act and EPBC Act within a 10 x 10 km area surrounding the subject site. Literature relevant to the subject site, including final determinations and recovery plans were also consulted.

### 2.2 Site Inspection

Cumberland Ecology staff (Dr David Robertson) inspected each of the subject sites on 22 August 2013. During the site inspection, notes were made about the nature and extent of native vegetation and other habitats for flora and fauna including sandstone rock outcrops, creeks and the presence of tree hollows. Representative photographs were taken of the landscape of each lot and these are presented in **Appendix A**.

### 3. Key Findings

#### 3.1 What is the E3 Environmental Management Zone?

According to the Strategic Review, Page 17, the E3 Environmental Management Zone *"is to be applied to land that has special 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."*

By definition, the E3 zone may be applied on land with one or more of the following suite of characteristics:

1. With special ecological, scientific, cultural or aesthetic attributes;
2. Where rehabilitation of the land's environmental qualities is required, as a transition between high conservation value land and other land.
3. With native vegetation or forest cover.
4. That is highly constrained where slope, erodible soils or salinity may have a key impact upon water quality.

From the features outlined for points 1-3 above for E3 zones above, for land to be validly zoned as E3, it should contain native flora and fauna, and/or it should include sites that require further rehabilitation and re-vegetation so as to form a buffer between the E3 and land of even greater flora and fauna values (presumably E2 land).

With regard to point 4, E3 land could also be steep, erodible or highly saline land that requires special management in future so as to avoid detrimental impacts to water quality.

Given that the proposed zoning of Oxford Falls would place an E3 zoning across the entire area, then it follows that the area should be well endowed with native flora and fauna habitats and/or be highly constrained by steep slopes, erodible soils and/or salinity.

#### 3.2 Site Conditions - as reflected by Council & DOPI information

The subject sites are shown outlined in yellow on the aerial photograph below, which demonstrates that the land is predominantly cleared. At least 80% of the landscape within the subject sites is totally cleared of native vegetation and, based upon the site history, has been cleared for many years (Figure 2).

The flora and fauna values that would be required to validate the current proposed E3 zoning are not generally apparent in the current aerial photography (though some strips of modified bushland occur in some lots). There is minimal native vegetation remaining in the subject sites. Some have been totally cleared and others have thin strips of highly modified native vegetation within them (Figure 2).





**Figure 2 Spatial Map showing Vegetation Coverage of the Subject Site**

Analysis of the various Council mapping also shows the same trend. The majority of land is mapped by Council in 2006-7 as the least constrained category, having "no significant constraints to development". Presumably this mapping took into consideration the highly cleared nature of the subject land.

Council mapping of land within the locality also maps the Oxford Falls lands as being mainly "land cleared of vegetation".

The Cumulative Level of Environmental Constraint Map within the ***Draft Oxford Falls Valley & Belrose North Strategic Review*** maps the land as having "moderate" environmental constraints to development, the second lowest level of constraint in a five tiered classification:

1. No environmental constraints to development;
2. Moderate environmental constraints to development;
3. Significant environmental constraints to development;
4. Severe environmental constraints to development and
5. Prohibitive environmental constraints to development.

Analysis of the raw data sheets that were used to assess the land values of the subject sites within Oxford Falls shows that all land was noted to have high percentages cleared of native vegetation (60-90%), all with dwellings and all with mostly moderate collective levels of environmental constraints (though the data sheets do not define how this was determined).

Analysis of the land within the subject sites, based upon field inspection on the 22 August 2013, has verified that the land is heavily cleared and modified with little native vegetation remaining. There is abundant evidence across all sites that they have been cleared and subjected to a variety of land uses for many years. The key points to note are that native vegetation is largely absent; there are many fences and dwellings, gardens and weeds. Additionally, it was observed that a high proportion of most lots are either flat or gently sloping and that there is no major rock outcrops across wide areas.

The water courses in the area are very small and are lined with weeds that are typical of heavily cleared and modified urban and agricultural areas in the greater Sydney area.

From my 18 years of consultancy experience in the Sydney Region, Cumberland Ecology knows that there are numerous threatened flora and fauna species that can and do occur in the wider locality within intact sandstone vegetation surrounding the subject lots. However, it is also noted that there is essentially no habitat on the subject lots for threatened species. There are at most some thin strips of bushland that may support low quality habitat for some threatened birds and bats. However, given the condition of the habitat relative to other habitats in the study area the bushland on the subject sites is not likely to be used to any significant extent.

Given the highly modified conditions of the waterways on the subject sites, there is little to no chance of any of the subject sites forming significant habitats for threatened frogs.

These observations are illustrated in the series of photographs that were taken during site inspection on 22 August 2013 (**Appendix A**).

### ***3.2.1 Lot 1040 DP 752038***

The majority (65%) of this lot has been entirely cleared and modified for housing and for activities including horse grazing. The northern third of the lot has modified sandstone native landscape vegetation and includes wildlife habitat in the form of heathland and woodland and rock outcrops. A wide variety of weeds, pasture plants and garden plants occur across the southern two thirds of the lot.

The southern portions (65%) are gently sloping land without major sandstone rock outcrops.

### ***3.2.2 Lot 1041 DP 752038***

This lot has been cleared and modified for housing and gardens, horse grazing, stables and training, agricultural and machinery sheds, and open grassland areas. About 85% of the Lot has had all native vegetation removed.

The southern portions (85%) are gently sloping land without major sandstone rock outcrops.

### **3.2.3 Lot 1042 DP 752038**

This lot has been cleared and modified for housing and gardens and open grassland areas. About 90% of the Lot has had all native vegetation removed. Previously, this property was used for horse agistment and orchards over some years.

The southern portions (90%) are gently sloping land without major sandstone rock outcrops.

### **3.2.4 Lot 1 DP 504480**

This lot is 90% cleared of native vegetation and has a house and infrastructure for an existing nursery, agricultural sheds and pasture. Aside from a strip of modified sandstone bushland in the west, this site lacks flora and fauna habitat. Previously, this lot was a chicken-farm until converted to a wholesale nursery by the current owners.

### **3.2.5 Lot 2 DP 504480**

This lot is 90% cleared of native vegetation and has a house, machinery shed, stables and pasture. Aside from a strip of modified sandstone bushland in the south west, this site lacks flora and fauna habitat. Previously, this property was a chicken-farm.

### **3.2.6 Lot A DP 368812**

This lot is 90% cleared of native vegetation and has operated as a horse boarding establishment for 40 years following use as a chicken farm and abattoir. The property now contains a house and infrastructure for stables and horse paddocks. The northern 10% of this lot consists of weedy vegetation with some native vegetation within it. It has very low conservation values.

## **4. Conclusion**

The landscape of the subject sites is highly cleared and modified. It has evidently been inhabited for many years since the original European settlement took place and there is a history of a wide variety of sometimes intense land uses.

Little native flora and fauna remains and the overwhelming character of the subject sites is attributable to exotic gardens, exotic pastures and weeds together with various houses and infrastructure.

The current proposal for the E3 zoning is inappropriate on ecological or other environmental grounds for all of the subject sites under consideration. None of the sites can be described as

*"Land that has special 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."*


It is strongly recommended that the proposed E3 zoning be changed to another zoning for these lands - a zone that encompasses the current land uses and the future land capability. The



highly modified lands of this zone are largely unsuitable for conservation and are highly unlikely to be rehabilitated to that purpose in the future.

If you have any queries regarding this letter, please don't hesitate to contact me on (02) 9868 1933.

Yours sincerely



Dr David Robertson

Director

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*Appendix A*

Photographs (Consultant)

Photographs (Consultant)

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**Photograph 1** Horse grazing in Lot 1040 DP 752038



**Photograph 2** Sandstone vegetation (top left) in northern portion of Lot 1040 DP 752038





**Photograph 3**      Moderate Condition Sandstone Bushland strip in Lot 1040 DP 752038 on northern border.



**Photograph 4**      Stables on Lot A DP 368812





**Photograph 5**      Stables on Lot A DP 368812 (bushland in background is not on site)



**Photograph 6**      House on Lot 2 DP 504480





**Photograph 7** Looking from Lot 2 DP 504480 to Pasture on Lot 1 DP 504480 (excluding buildings at rear of photo which are 60-place childcare centre on neighbouring property Lot 1039 DP 752038)



**Photograph 8** Back yard in Lot 2 DP 504480 and thin strip of modified bushland on adjoining road reserve





**Photograph 9**      House on Lot 2 DP 504480



**Photograph 10**      Regrowth on south-western portion of Lot 2 DP 504480





**Photograph 11**      Lot 1041 DP 752038



**Photograph 12**      Lot 1041 DP 752038





**Photograph 13**      Gardens behind 1042 DP 752038



**Photograph 14**      Pasture on Lot 1 DP504480 and bushland on crown land and road reserve





**Photograph 15** Pasture and exotic Banana palms on Lot 1 DP 504480



**Photograph 16** Pasture and nursery areas on Lot 1 DP 504480

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*Appendix B*

Photographs (Owners)

Photographs (Owners)

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Please note that the following photographs were provided by the owners for clarification purposes.



**Photograph 17**      Lot 2 DP504480 pasture area and horse stables



**Photograph 18**      Lot 1042 DP752038 facing north from house to lawn area, vineyard and orchard





**Photograph 19** Lot 1042 DP752038 front lawn facing south from house



**Photograph 20** Lot A DP 368812 horse arena and stables

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*Appendix C*

Tables of Comparison

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## **C.1 Excerpts from the Draft Oxford Falls Valley & Belrose North Strategic Review**

### ***C.1.1 E3 Environmental Management zone***

The E3 Environmental Management 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 Environmental Management zone may be applied on land:

- With special ecological, scientific, cultural or aesthetic attributes;
- Where rehabilitation of the land's environmental qualities is required, as a transition between high conservation value land and other land;
- With native vegetation or forest cover; and
- That is highly constrained where slope, erodible soils or salinity may have a key impact on water quality.

Warringah LEP 2011 uses the E3 Environmental Management zone for 3 former localities: Mona Vale Road North, Mona Vale Road East and Mona Vale Road West.

### ***C.1.2 Objectives of zone***

- 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.

<b>Table 1 Plot Attributes in Relation to E3 Zoning Indicators</b>						
<b>E3 Environmental Management zone - Indicators</b>	<b>Subject Sites</b>					
	<b>1040/752038</b>	<b>1041/752038</b>	<b>1042/752038</b>	<b>1/504480</b>	<b>2/504480</b>	<b>A/368812</b>
<b><i>The Environmental Management zone may be applied on land:</i></b>						
With special ecological, scientific, cultural or aesthetic attributes.	Largely cleared - these values don't exist (on all bar the northern vegetation strip)	Largely cleared - these values don't exist	Largely cleared - these values don't exist	Largely cleared - these values don't exist	Largely cleared - these values don't exist	Largely cleared - these values don't exist
Where rehabilitation of the land's environmental qualities is required, as a transition between high conservation value land and other land.	As above - only a transition zone in the northern strip	As above - only a transition zone in the northern strip	Not a transition zone	Not a transition zone	Not a transition zone	Not a transition zone
With native vegetation or forest cover.	Mostly cleared	Mostly cleared	Mostly cleared	Mostly cleared	Mostly cleared	Mostly cleared
That is highly constrained where slope, erodible soils or salinity may have a key impact on water quality.	Land not highly constrained - soils and slope not as described.	Land not highly constrained - soils and slope not as described.	Land not highly constrained - soils and slope not as described.	Land not highly constrained - soils and slope not as described.	Land not highly constrained - soils and slope not as described.	Land not highly constrained - soils and slope not as described.

**Table 1 Plot Attributes in Relation to E3 Zoning Indicators**

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	<b>1040/752038</b>	<b>1041/752038</b>	<b>1042/752038</b>	<b>1/504480</b>	<b>2/504480</b>	<b>A/368812</b>
Conclusion	E3 inappropriate (except narrow northern strip of native vegetation)	E3 inappropriate (except small and insignificant northern strip of native vegetation)	E3 inappropriate	E3 inappropriate	E3 inappropriate	E3 inappropriate

## C.2 Rural Zones

### C.2.1 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 and not for land that is primarily residential in function. Warringah Council currently applies this zone in Duffys Forest and Terrey Hills.

## C.3 Residential Zones

### C.3.1 R2 Low Density Residential Zone

The R2 Low Density Residential zone is the lowest density urban residential zone which aims to provide for the housing needs of the community within a low density residential environment. The zone is generally restricted to services that meet the day-to-day needs of residents.

Warringah LEP 2011 applies the R2 Low Density Residential zone in large parts of the Local Government Authority and permits uses such as boarding houses, dwelling houses and group homes.

### C.3.2 R3 Medium Density Residential Zone

The R3 Medium Density Residential zone is for land comprising of medium density accommodation. A variety of residential uses have been mandated in the zone to encourage housing choice and diversity. The R3 Medium Density Residential zone is generally applied in locations close to or within centres with a diverse range of established services and infrastructure.

Warringah LEP 2011 contains the R3 Medium Density Residential zone, and permits attached dwellings, dual occupancies, dwelling houses, multi dwelling housing, neighbourhood shops, residential flat buildings and seniors housing.

### ***C.3.3 R5 Large Lot Residential Zone***

The R5 Large Lot Residential zone is intended to cater for development that provides for residential housing in a rural setting and is generally located at the interface of environmentally sensitive land along one boundary and urban land along the other.

Warringah LEP 2011 does not currently use the R5 Large Lot Residential zone.

## **C.4 Schedule 1 - Additional Permitted Uses**

Clause 2.5 of the Standard Instrument Order allows councils to permit additional uses for particular land. These uses are permitted in addition to those identified in the LEP Land Use Table or other planning instruments such as the ISEPP. Additional permitted uses are to be inserted in Schedule 1 of the LEP and may be mapped.

For clarity, land use permissibility should preferably be controlled by the zones and the Land Use Table. Where this is not possible and the intended outcome is adequately justified by council, the use of Schedule 1 may be acceptable. Generally, additional listings under LEP Schedule 1 should be minimised and should only proceed where council can demonstrate that there is no other acceptable zoning solution.

For the purposes of this strategic review, it was agreed that the use of Schedule 1 would be used sparingly and only in circumstances where it is difficult for the land use permissibility to be controlled by the Land Use Table. Generally, it is proposed that anomalous or non conforming sites are managed by existing use rights provisions of the Environmental Planning and Assessment Act 1979.

Warringah LEP 2011 currently has 18 items listed under Schedule 1.

Schedule 1(18) relates to the use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills (Area 1). This land is zoned RU4 Primary Production Small Lots but Schedule 1 also allows for:

- Educational establishments;
- Garden centres;
- Hospitals;
- Hotel or motel accommodation;
- Places of public worship;
- Recreation areas;



- Recreation facilities (indoor), recreation facilities (outdoor); and
- Registered clubs and restaurants or cafes.

Part of this strategic review considers whether it is suitable for Schedule 1(18) controls to be expanded to parts of the study area.