

ATTACHMENT 5

3 February 2010



Ms Deborah Stevenson
Acting Manager Metro Projects and Support
Department of Environment, Climate Change and Water
PO Box 668
PARRAMATTA NSW 2124

Your Ref:

Our Ref:

Dear Ms Stevenson

Re: Development Concept - Hill Road and Colbarra Place, West Pennant Hills

I refer for your consideration the accompanying environmental constraints report prepared by GHD Pty Ltd (December 2009) for land located at the intersection of Colbarra Place and Hill Road, West Pennant Hills. The accompanying report seeks "In-Principle" support from the Department of Climate Change and Water (DECCW) for a limited development outcome that addresses the site's constraints and provides the opportunity to protect, improve and add to ECC's known to exist at this location.

The "Executive Summary" of the accompanying report provides a brief history of past actions by Council in seeking the Department's support (DECCW's) for a rezoning application to the Department of Planning (DoP) and were based entirely on an attempt to rezone the entire site Residential 2(a2). Obviously and for good reason that application was not supported by the Department of Climate Change and Water and consequently neither by the Department of Planning as it was considered site specific controls would not provide adequate protection for the future management of vegetation on the site.

Council has reviewed its past actions and reports and with the benefit of a revised report by consultants GHD Pty Ltd (*Revision 3*) is again seeking the Department of Climate Change and Water's (DECCW's) "In-Principle" support for a further application to the Department of Planning (DoP). This revised report seeks to determine the most appropriate development option/s for the site, having regard to the various opportunities and constraints and is based on an achievable biodiversity offset strategy that will through time, result in an overall improvement to ecological values and security for future management of conservation areas.

In this regard and in order to increase the area of land potentially available for residential development and conservation purposes, Council is seeking to acquire Lot 4 DP 16095 from the present property owners as part of a biodiversity offset strategy. Negotiations for the purchase of Lot 4 DP16095 are underway and if successful Lot 4 DP 16095 will be consolidated with Lot 3 DP 16095 and Lot 32 DP 1004057 as these lots are already owned by Council.

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The consolidation of all three parcels of land into one allotment will enable Council to pursue a development strategy that, subject to consideration of environmental and bushfire constraints and a successful rezoning application to the Department of Planning (DoP), provides Council with an area of land fronting Hill Road suitable for residential development and zoned Residential 2(b), and the remainder conserved as Open Space 6(a) (Existing and Proposed Public Recreational Zone).

Further to the above and in reference to the "Zoning Boundary Options" contained in the report by GHD Pty Ltd, Council also submits a Draft Plan dated 20/11/09 (Ref: 0973-1) that details an eleven (11) lot subdivision proposal with lots fronting Hill Road (10) and Colbarra place (1). This subdivision proposal represents a potential maximum yield and like Zoning Options 1 to 3 (Figure 5-1) is referred for discussion purposes only.

For further information concerning the above please contact me direct by phoning 8853 1909 Monday to Friday between the hours of 8.00 am and 5.00 pm.

Yours faithfully

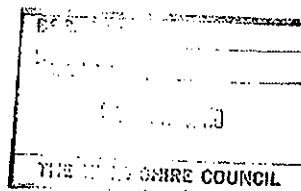


Laurie Doorey
MANAGER PROPERTY DEVELOPMENT

encs

Your reference:
Our reference: DOC10/6438
Contact: Richard Bonner, 9995 6833

Mr Laurie Doorey
Manager Property Development
The Hills Shire Council
PO Box 75
CASTLE HILL NSW 1765



Attention: Stewart Seale – Manager, Forward Planning

Dear Mr Doorey

Re: Development Concept – Hill Road and Cobarra Place, West Pennant Hills

I refer to your 3 February 2010 letter seeking 'in-principle' support from the Department of Environment, Climate Change and Water (DECCW) on a development concept for the Hill Road Reserve and adjoining lands in West Pennant Hills. While I appreciate the opportunity to review this proposal, DECCW does not endorse development concepts or provide 'in-principle' support for development concepts. The following advice is therefore provided to assist Council assess the merits of the proposal. These comments are based on a review of the December 2009 Revision 3 Development Opportunity (DO) and the May 2008 Flora and Fauna reports prepared by GHD. This advice addresses:

- An apparent understating of the area of high conservation significance impacted by the proposed development.
- The impacts on vegetation from the proposed subdivision.
- The impacts on vegetation within the proposed conservation area from Asset Protection Zones (APZs) required for existing residences on adjoining land.
- The feasibility of recreating viable endangered vegetation communities.
- Appropriate land-use zoning for the proposed conservation area.
- The role of DECCW in the consent process.

Understating areas of high conservation significance

I note from the DO report that an ecological assessment of the site was completed in March 2008. Based on this assessment, a Conservation Significance Assessment Process (CSAP) has assigned a high, medium or low conservation significance/development constraint value to the site. The CSAP considers a range of environmental factors including vegetation type, condition and connectivity; known or potential habitat or habitat features for threatened fauna species; and the existence of waterways and riparian vegetation. This approach is supported but the Conservation Significance map (figure 3-2) does not appear to accurately reflect the significance criteria listed on page 13 of the DO report. For example, 'remnant or maturing, regenerating Endangered Ecological Communities (EECs) listed under the NSW Threatened Species

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Department of Environment and Climate Change NSW

Conservation (TSC) Act 1995... and *'creek lines and associated riparian vegetation'* are criteria for areas of high conservation stated by the DO report. However, neither the Blue Gum High Forest (BGHF) vegetation on the south-west boundary (which also contain two stag trees) nor all of the two waterways are delineated as areas of high conservation significance (HCS). Inclusion of these areas would increase the HCS area by around 1,600m² and the total HCS area impacted by the proposed development to around 6,000m².

As indicated in the DO report, BGHF is listed as critically endangered ecological community under the TSC Act. This is primarily because the risk of BGHF becoming extinct in the immediate future is extremely high. According to the NSW Scientific Committee, the significant threats to remnant areas of BGHF are small-scale clearing associated with residential subdivision, road upgrading, extension and maintenance of service easements. As indicated in our April 2006 advice in relation to the previous proposed rezoning of the site, less than 35ha of good condition BGHF remains in the Council area out of a total remaining extant area of less than 200ha¹. Council should therefore give a high priority to securing protection for any remnant areas of BGHF.

Impacts on vegetation from the proposed subdivision

The development of proposed lots 1 to 11 will result in the loss or modification of remnant vegetation. There will also be indirect impacts on vegetation to provide for APZs within the conservation area (proposed lot 12). Council proposes these vegetation impacts would be offset through the regeneration and revegetation of proposed lot 12. The clearing of native vegetation and mitigation by offsets should, however, only be considered where impacts are unavoidable. This is of particular importance given the critically endangered status of BGHF. In assessing the adequacy of any offset proposal, it is recommended an objective methodology (such as BioBanking) be applied. For details on BioBanking see <http://www.environment.nsw.gov.au/biobanking>.

Impacts on vegetation within the proposed conservation area from Asset Protection Zones required for existing residences on adjoining land

I note that existing residential dwellings directly adjoin the proposed conservation area on the southern boundary. On the western boundary, existing dwellings are separated from the proposed conservation area (to be re-established/restored) by a driveway and around 20 metres of cleared land. It is unclear if Asset Protection Zones (APZs) will be required in these locations given 'exceptional circumstances' may apply if the proposed conservation area is considered to be an area maintained as 'council parkland'. If APZs are required, the ecological significance of the conservation area in these locations will be impacted. This should be considered in assessing the ecological impacts of the development concept.

Re-establishing Endangered Ecological Communities

I note that one component of the development concept entails re-establishing around 5,000m² of the original vegetation on severely disturbed land containing a dwelling, swimming pool, tennis court and sheds. This land would appear to be devoid of any remnants of original vegetation (including viable seed stock). DECCW is unaware of any instances where either BGHF or Sydney Turpentine Ironbark Forest EECs have been successfully re-established in non-vegetated areas in the short to medium term and questions the viability of doing so in this instance. This should be considered in the development of the development concept, the associated biodiversity offset strategy, and any proposed changes to the current zoning.

Land-use zoning of the proposed conservation area

The DO report recognises the need to 'undertake *'a targeted regeneration program to rehabilitate suitable areas'* and to develop an *'appropriate (vegetation) management plan for the overall site'*. In addition to these essential elements of restoring and protecting areas of ecological significance,

¹ 11 April 2006 letter to Council providing s.34A advice on a proposed amendment to Baulkham Hills Local Environmental Plan 2005.

DECCW also recommends an appropriate environmental protection zoning be applied to protect the proposed conservation area to ensure inappropriate land uses are not undertaken.

It is noted Council proposes applying an Open Space 6(a) (Existing and Proposed Public Recreation) zone to proposed lot 12. This is presumably because Baukham Hills LEP 2005 does not include a general environment protection zone. DECCW does not support the use of a land use zone primarily intended for public recreation purposes over a conservation area. In the absence of an appropriate zone within the current LEP, Council should apply an Environmental Conservation (E2) zone available under the Standard Instrument LEP to proposed lot 12.

The role of DECCW in the consent process

It is recognised that Council is the consent authority for this development proposal, however, DECCW notes that if Council determines the proposal is likely to have a significant effect on threatened species or ecological communities then the concurrence of the Director-General of DECCW will be required before consent may be granted. The statutory requirements under clause 59(1) of the *Environmental Planning and Assessment Regulation 2000* (EPA Reg) stipulate the Council, as part of a concurrence application:

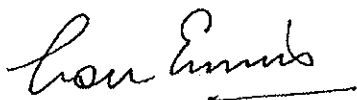
- (a) must forward a copy of the application (together with all accompanying documentation) to the concurrence authority whose concurrence is required; and
- (b) must notify the concurrence authority in writing of the basis on which its concurrence is required and of the date of receipt of the development application; and
- (c) if known at that time, must notify the concurrence authority in writing of the dates of the relevant submission period or periods if the application is to be publicly notified under section 79 or 79A of the *Environmental Planning and Assessment Act, 1979*.

To satisfy the requirements of clause 59(1)(a) of the EPA Reg, concurrence applications should be accompanied by:

- A copy of the development application.
- Two copies of the Species Impact Statement (SIS) and any document upon which the SIS relies.
- A copy of any preliminary fauna and flora assessment (i.e. the report addressing the 7 part test) undertaken prior to preparation of the SIS.
- A copy of Council's assessment report recommending that consent be granted and the conditions of that proposed consent.
- A copy of any submissions or objections received by Council concerning the development application.
- A copy of any social and economic impact assessments that have been undertaken in relation to the development application.
- A cheque for \$250, in accordance with s.252A of the EPA Reg, made out to DECCW.

Please contact Richard Bonner on 9995 6833 if you have any queries regarding these comments.

Yours sincerely

 7/5/10

LOU EWINS
Manager Planning and Aboriginal Heritage
Metropolitan Branch
Environment Protection and Regulation



08 September 2010



Mr Richard Bonner
Department of Environment, Climate Change and Water
PO Box 668
PARRAMATTA NSW 2124

Your Ref: DOC10/5438
Our Ref: FP158

Dear Mr Bonner

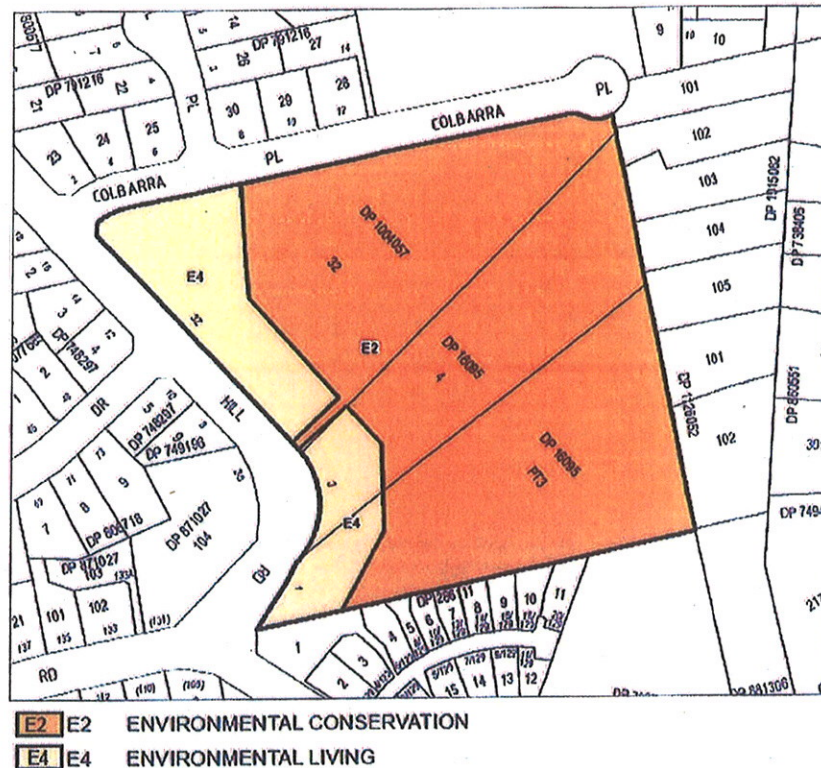
RE: Proposed Planning Proposal & Development Concept, Hill Road and Colbarra Place, West Pennant Hills

I refer to previous correspondence dated 3 February 2010 from Council's Manager Property Development, Mr Laurie Doorey and your response dated 7 May 2010 in which you provide comments on the Development Opportunity Report prepared for Council by GHD (December 2009) and advise of DECCW's role in the consent process.

Whilst Council's previous correspondence requested in principle support of a development concept for the site, what Council wishes to seek in the first instance is an indication of support prior to proceeding with a *draft planning proposal to rezone the site* that would precede any future development proposal. Your support is sought in this regard since the previous draft Local Environmental Plan to rezone the site in 2006 did not proceed beyond section 64 stage because DECC did not support the plan (April 2006, Ref No.02/00855). Council was formally advised by the Department of Planning in October 2006 that the plan would not proceed unless Council had attempted to resolve the objections raised by DECC by considering alternatives and discussing options.

The previous draft LEP proposed to rezone the entire site to Residential 2(a2) with site specific controls to manage and protect the significant vegetation on the site. As outlined in Mr Doorey's letter, Council was pleased to abandon that plan and has spent considerable time preparing a new proposal for the site that will achieve a very positive outcome for the site.

Since February, Council's preparation of the draft LEP 2010 in accordance with the Standard Template has progressed such that it is now appropriate to propose template zonings for the subject site. The objectives of the E4 Environmental Living and E2 Environmental Conservation zones are consistent with Council's vision and high conservation value of the site. The proposed zoning layout is shown below: -



Although the new proposal is significantly different to the previous draft LEP, the Department of Planning will expect Council to provide evidence of constructive liaison with DECCW, and demonstrate how it has sought to resolve the issues raised by DECC in the previous proposal. For this reason and to discuss the concerns raised in your correspondence in May 2010, I would like to request a meeting at your offices and will contact you shortly to make arrangements.

Please understand that without the appropriate rezoning of the site and acquisition of Lot 4 that will facilitate some minor, low scale development and consistent Council ownership of the vegetated areas of the site, the opportunity to achieve an excellent conservation outcome will be lost. The site will continue to be in poor condition, with its management inhibited by fragmented ownership.

I look forward to meeting with you in person to explain Council's proposal in detail, however should you wish to discuss this matter earlier please contact Forward Planning Coordinator, Kate Clinton on 9843 0129 (Tues/Wed).

Yours faithfully

Fluorapatite.

Stewart Seale
MANAGER FORWARD PLANNING



13 October 2010



Ms Lou Ewins
Manager Planning & Aboriginal Heritage
Metropolitan Branch
PO Box 668
PARRAMATTA NSW 2124

Your Ref: DOC10/5438

Our Ref: FP158

Dear Lou

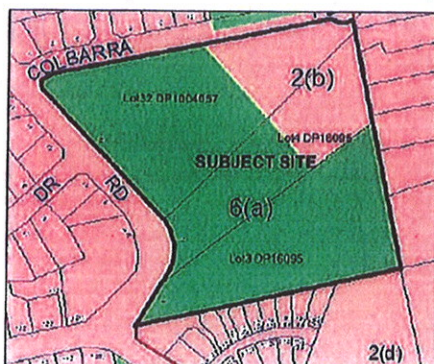
Hill Road and Colbarra Place, West Pennant Hills

I refer to correspondence dated 7 May 2010 in which you raised concerns regarding Council's proposal for the above site. In our response dated 8 September 2010, we clarified that at this stage, Council seeks DECCW's support only for a planning proposal to rezone the site. Any development would occur at a later date subject to the success of the planning proposal and the usual consent process. DECCW's role in the consent process as outlined in your letter is noted.

We look forward to meeting with you on 20 October 2010 to discuss Council's proposal in more detail, however the following information is provided to assist you in considering the matter prior to the meeting.

1. Zoning

The subject site is currently zoned part Open Space 6(a) and part Residential 2(b) as shown below: -



Current Zoning - Baulkham Hills LEP 2005

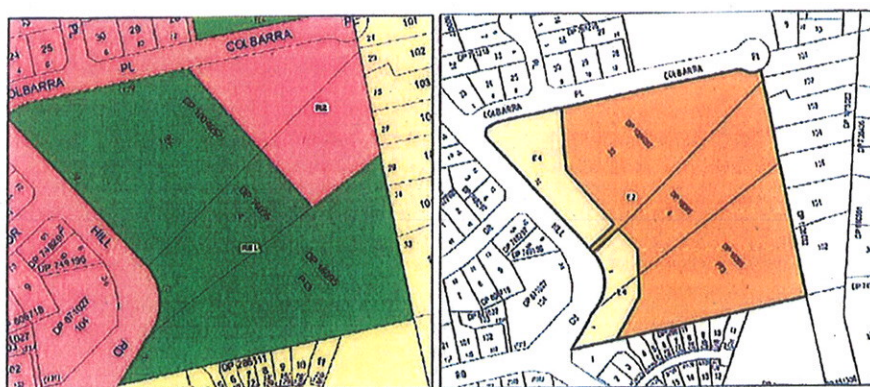


Aerial Photograph (2008)

The Residential 2(b) zone permits low density residential development such as single dwellings and dual occupancies. The 6(a) (Existing and Proposed Public Recreation) zone also permits a variety of development including agriculture, community facilities, public buildings and recreation facilities. Clearly the location and nature of the existing zoning does not reflect the environmental characteristics of the site, particularly in the north eastern corner.

Council is currently preparing a draft LEP 2010 in accordance with the Standard Template. To a certain extent, Council has undertaken a translation of the existing zones into the most closely related Template zones. Therefore the likely zoning of this property under the draft LEP 2010 is R2 Low Density Residential and RE1 Public Recreation in the exact same configuration as the BHLEP 2005 zones (shown below), which again does not entirely address the environmental qualities of the site.

We believe the proposed planning proposal that seeks to rezone the site to E2 Environmental Conservation and E4 Environmental Living, provides the best zoning outcome for the site in a pattern that is consistent with the location of high conservation value areas.



Zoning, uncertified draft BHLEP 2010

Proposed Zoning - Hill Road Planning Proposal

The E2 zone is likely to permit only the following: clearing native vegetation, earthworks, environmental facilities, environmental protection works, research stations and roads, obviously not all of which Council would seek to utilise. The E4 zone is likely to permit only home-based child care, home occupations, bed and breakfast establishments, building identification signs, business identification signs, clearing native vegetation, community facilities, dwelling houses, earthworks, environmental protection works, emergency services facilities, home businesses, roads, and secondary dwellings.

Again I stress that without the appropriate rezoning of the site and acquisition of Lot 4, the opportunity to achieve an excellent conservation outcome will be completely lost. The site will continue to be in poor condition, with its management inhibited by fragmented ownership and an unsuitable zoning pattern. The protection of this site is entirely reliant on funds generated from some low scale future development in order to pay for the acquisition of Lot 4, demolition of existing structures, extensive weed control and rehabilitation of the BGHF into the future.

2. Areas of high conservation significance

You raised concerns regarding the understating in the GHD report of the significance of a portion of the riparian corridor, and a remnant of Blue Gum High Forest (BGHF) with two stag trees located at the south western corner of the site.

With respect to the riparian corridor, please note these are very minor drainage channels either without vegetation (apart from grasses) in part, or occupied by privet / regrowth and do not warrant a "high conservation significance" status. Certainly the areas that are vegetated (outside of the proposed E4 zone) would be rehabilitated as part of a Vegetation Management Plan for the site. Some current images of the drainage corridors within the proposed E4 zone area are provided below for your reference.



Drainage corridor - Lot 32



Drainage corridor - boundary of Lot 32 & Lot 4 taken from within the site

With respect to the patch of BGHF in the southwestern corner together with stag trees, Council is happy to look further at this particular area.

3. Impacts on vegetation from the proposed subdivision

You suggest that Council consider Biobanking as an objective method of dealing with some loss of BGHF on the site rather than relying on revegetation.

We do not believe that biobanking is a viable or suitable option. A significant conservation opportunity is at risk if Council is not able to proceed with the proposed planning proposal. It is felt that DECCW has misunderstood Council's intentions and the critical issue of needing to obtain ownership of Lot 4 and undertaking some minor development in order to fund this and to achieve a successful and long term outcome for the site. If Lot 4 passes into other private ownership DECCW can be assured that the site will suffer from gradual loss of significant vegetation and mismanagement of the understorey by future residents.

4. Impacts on vegetation within the proposed conservation area from Asset Protection Zones required for existing residences on adjoining land

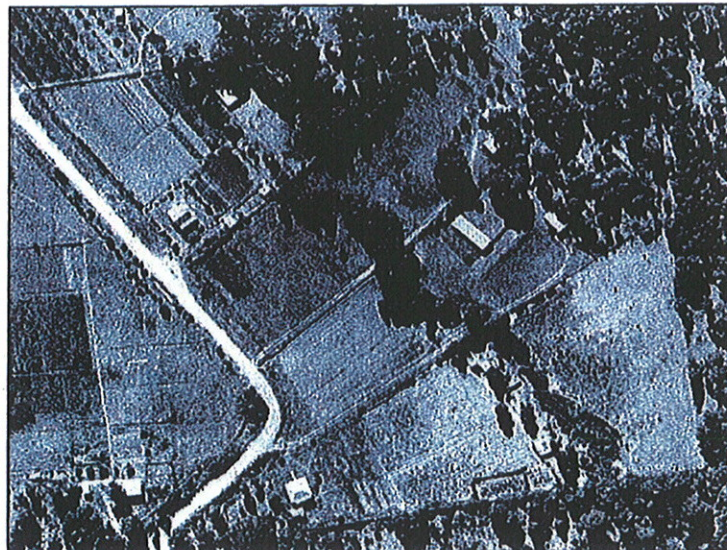
You raised concerns with regard to existing development located to the east (although your letter refers to it as west) of the site, separated by a common access driveway and future APZ requirements resulting from revegetation. These dwellings are located between 25 and 35m from the boundary of the subject site.

Based on a recent (2009) approval on the southernmost vacant lot serviced by this driveway, only a 20m inner protection area is required to be provided within that property, with no impact on the subject site at one of its most vegetated points. Similarly, the distance of the subdivision (not yet commenced) and existing homes adjoining the southern boundary of the site are not anticipated to require any additional APZ measures. In fact, the NSW Rural Fire Service did not require any APZ to be provided to the land directly adjoining the south of the site when Council approved this subdivision in 2005, apart from the existing electricity easement to the east.

5. Re-establishing Endangered Ecological Communities

You raise concern regarding the successful re-establishment of the ecological communities on the site. Council's Bush Care team has vast experience in regeneration practices. Any revegetation would utilise plants from the relevant ecological community obtained from the community nursery. The nursery collects seeds from various catchments (in this case, the Darling Mills Catchment), and would therefore use the appropriate species collected from the same catchment. Furthermore, whilst on site bush care workers monitor for any native revegetation and if found, would encourage that growth rather than replanting.

Your attention is also drawn to the aerial photograph provided in the GHD Development Opportunity Report (copied below) which shows in 1943, the majority of the site was not heavily vegetated, particularly the south eastern corner of the site on which BGHF is now well established. Council is confident that a combination of controlled natural and assisted regrowth will extend and enhance these species on the site where they are not currently located.



I trust this information has been useful and will assist in your preparation for our meeting. Please contact Kate Clinton, Forward Planning Coordinator on 9843 0129 or kclinton@thehills.nsw.gov.au should you wish to discuss anything in this letter prior to the meeting.

Yours faithfully



Stewart Seale
MANAGER FORWARD PLANNING

CC: Richard Bonner, Regional Operations Officer

Your reference: FP180
Our reference: DOC10/48483
Contact: Richard Bonnar, 09056033

Mr Stewart Seale
Manager Forward Planning
The Hills Shire Council
PO Box 76
CASTLE HILL NSW 2164

Dear Mr Seale

Re: Hill Road and Cobarra Place, West Pennant Hills

I refer to your e-mailed letter of 13 October 2010 in response to Department of Environment, Climate Change and Water's (DECCW) advice provided by letter dated 7 May 2010 on Council's proposal for a development concept and rezoning for the Hill Road Reserve and adjoining lands in West Pennant Hills. I also refer the 20 October 2010 meeting with representatives of DECCW and the Department of Planning to assist Council with planning for this site.

As advised in DECCW's 7 May letter, and reiterated at the 20 October meeting, DECCW does not endorse development concepts or provide 'in-principle' support for development concepts. DECCW supports Council's efforts to achieve a positive environmental outcome for the site and acknowledges the current zoning proposal is a significant improvement on the previous (2006) zoning proposal.

DECCW understands Council is considering the preparation of a planning proposal for this site and the following additional advice is provided to assist Council in this process:

- **Zoning:** DECCW supports the application of an E2 zoning with appropriate permitted uses to protect areas of high conservation value. It is noted the uses with consent which will apply to the proposed E2 zoned area include 'clearing native vegetation' and 'research stations'. The appropriateness of these uses is questioned and it is recommended Council review all permitted with consent uses against the E2 zone objective of protecting area of high conservation values. If incompatible uses are included to address existing uses in other proposed E2 zoned lands, it is recommended Council consider applying split zoning to these lands.
- **Areas of high conservation significance:** DECCW's 7 May advice to Council highlighted an inconsistency with the application of the Conservation Significance Assessment Process (CSAP) detailed in the May 2008 Flora and Fauna report and figure 3-2 of the December 2009 Development Concept report which delineates the site's conservation significance. While the images included in Council's 13 October letter suggest some of the riparian areas have limited biodiversity significance, the CSAP assigns high conservation significance (HCS) to 'creek lines and associated riparian vegetation'. A HCS should also apply to the area of Blue Gum High Forest (BGHF) in the southwestern corner of the site as it contains 'remnant

The Department of Environment and Climate Change is now known as the Department of Environment, Climate Change and Water

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Department of Environment and Climate Change NSW

or maturing, regenerating EEC ... (and) large hollow-bearing trees/stags'. The import of these inconsistencies is an underestimation of the HCS area impacted by development. This is an issue Council should consider in assessing the biodiversity impacts of the planning proposal.

- **Impacts on vegetation from the proposed subdivision:** DECCW previously advised that the clearing of native vegetation and mitigation by offsetting should only be considered where impacts are unavoidable. In considering any offsets, it was recommended Council apply an objective assessment methodology (such as BioBanking) to determine whether the revegetation and restoration proposed adequately offsets the losses and modifications to existing vegetation. It appears Council may have misinterpreted this advice. To clarify, DECCW is suggesting Council apply the BioBanking Assessment Methodology to assess the adequacy of proposed offsets, not that Council apply for a BioBank statement or a BioBank agreement. By applying an objective assessment methodology Council can determine whether any offset biodiversity credits are required should the proposal result in an overall reduction in biodiversity values.
- **Impacts on vegetation within the proposed conservation area from Asset Protection Zones required for existing residences on adjoining land:** As advised at the 20 October meeting, bushfire Asset Protection Zones (APZs) should be wholly located within the area permitted for development. DECCW notes Council's advice that APZs required for existing residences on the eastern boundary will not encroach on the proposed E2 zoned areas.

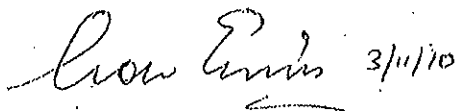
With regard to the southern boundary of the site, it is noted that existing and approved development may require some APZs within the proposed conservation area. In these instances, biodiversity values will be reduced and Council should consider applying a more appropriate zoning (eg RE1).

Biodiversity values will also be reduced within the APZs required to protect the proposed E4 zoned lands (lots 1 to 11). It is therefore recommended Council re-consider the proposed zoning for the site to ensure any APZs are not located within an area zoned E2.

- **Re-establishing Endangered Ecological Communities:** As previously advised, DECCW is unaware of any instances where either BGHF or Sydney Turpentine Ironbark Forest have been successfully re-established in non-vegetated areas in the short to medium term. DECCW therefore recommends that prior to finalising the planning proposal, an independently reviewed revegetation management plan be prepared by Council to ensure re-establishment is feasible.

Please contact Richard Bonner on 9995 6833 if you have any queries regarding these comments.

Yours sincerely

Handwritten signature of Lou Ewins, dated 3/11/10.

LOU EWINS
Manager Planning and Aboriginal Heritage
Metropolitan Branch
Environment Protection and Regulation