
ORDINARY MEETING OF COUNCIL14 DECEMBER, 2010

ITEM-23	PLANNING PROPOSAL - HILL ROAD RESERVE, LOT 32 DP1004057, NO 1-19 COLBARRA PLACE, LOTS 3 & 4 DP16095, NOS 1 & 3 HILL ROAD, WEST PENNANT HILLS (FP158)
THEME:	Balanced Urban Growth
HILLS 2026 OUTCOME/S:	BUG 2 Lifestyle options that reflect our natural beauty.
COUNCIL STRATEGY/S:	BUG 2.1 Facilitate the provision of diverse, connected and sustainable housing options through integrated land use planning.
GROUP:	STRATEGIC PLANNING
AUTHOR:	FORWARD PLANNING COORDINATOR KATE CLINTON
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING STEWART SEALE

EXECUTIVE SUMMARY

This report recommends a planning proposal be prepared to rezone the Hill Road Reserve and adjoining land, using Standard Template LEP zones, to part E2 Environmental Conservation and part E4 Environmental Living. A planning proposal to this effect would result in an outcome that is most beneficial from an environmental, community and Council land management perspective.

The Hill Road Reserve and adjoining land (the site) is located in the West Pennant Hills Valley. The site consists of three properties, two occupied by residences and one used as passive open space. Two are owned by Council, the other is privately owned. The site is occupied in parts by endangered ecological communities and a minor riparian corridor.

The Hill Road Reserve is not required to meet the open space need of residents in the Valley, however the various constraints of the site (vegetation, bushfire, riparian corridor) preclude any significant form of alternative development. The current zoning pattern does not reflect the location of high conservation significance areas, nor the limited development potential that does exist on the site. Therefore consultancy firm GHD were engaged to advise Council of the best planning outcome in order to both protect significant vegetation, and identify an area for appropriate low scale development. This report details potential rezoning and development of the land resulting from GHD's and Council's investigations.

BACKGROUND

APPLICANT: The Hills Shire Council

OWNER: THSC - Lot 32 DP1004057, No. 1-19 Colbarra Place and Lot 3 DP16095 No.1 Hill Road.

Mr C R Holder and Mrs J I Holder - Lot 4 DP 16095, No. 3 Hill Road.

ZONING: LEP 2005: Residential 2(b) and Open Space 6(a) (Existing and Proposed Public Recreation)
Draft LEP 2010: RE1 Public Recreation and R2 Residential Low Density

AREA: Total - 4.49ha
Lot 32 (1.87ha), Lot 3 (1.52ha), Lot 4 (1.1ha)

EXISTING DEVELOPMENT: Lot 32 - vacant, Lot 3 - dwelling house, Lot 4 - dwelling house and ancillary pool, tennis court and sheds.

HISTORY

- 02/06/91** Council's Open Space Review found the Hill Road Reserve (Lot 32 DP 1004057) to be surplus to the open space needs in this locality, and unsuitable as a location for playing fields. The Department of Education expressed an interest in acquiring the property for a school.
- 17/11/92** Council resolved to prepare and exhibit a draft LEP to rezone the site (Nos 1 & 3 Hill Road, and No 1-19 Colbarra Place) from part Open Space 6(a) and part Residential 2(b), to part Residential 2(b) and part 5(a) (Educational Establishment) for the purposes of a school.
- 27/02/96** Council deferred consideration of the draft LEP to further consider the adequacy of open space in the West Pennant Hills Valley, and to seek a firm commitment from the Department of Education.
- Nov 1996** The Department of Education advised it was no longer interested in the site, and the draft LEP was abandoned. A Needs Study undertaken in 1996 found that there is adequate overall provision of open space (excluding the Hill Road site), but that attention needs to be paid to enhancing the level of embellishment, which could be assisted with funds from the sale of the Hill Road Reserve.
- Sept 2003** Council undertook a Recreation Needs Study of the West Pennant Hills Valley to ensure that the recreation projects contained in the works program remained relevant to current need. The Study found that the Hill Road Reserve is unsuitable for an indoor facility (and that one is not required in the Valley at all), but is suitable for informal open space linkages to other open space.
- 11/10/04** The Sporting Reserves and Playing Fields Committee resolved in part to undertake a feasibility study to address the potential for open space use of

the Hill Road Reserve and whether or not Council should acquire Lot 4 DP 16095.

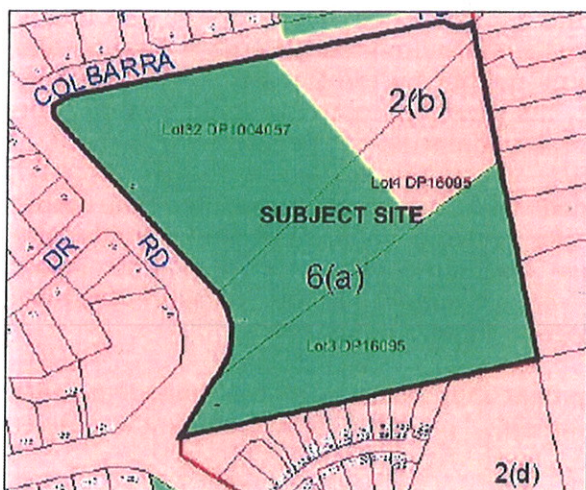
- July 2005** Council engaged Abel Ecology to undertake a Flora & Fauna Study of the site. Critically endangered vegetation and fauna species were identified.
- Sept 2005** Council engaged Patterson Britton to identify the area of the site affected by a 1 in 100 year flood event.
- 13/12/05** Council considered a report on various options for the future of the site and resolved to prepare a draft LEP to rezone the entire site to Residential 2(a2), with site specific development controls. The intention was to develop a narrow strip on the western side of the site, and protect the remainder of the site and significant vegetation with targeted controls under a community title arrangement.
- 11/04/06** The draft LEP was not supported by the (then) Department of Climate Change (DEC), now the Department of Environment, Climate Change and Water (DECCW), and consequently neither by the Department of Planning (DOP). It was considered that site specific controls would not provide adequate protection for endangered vegetation on the site.
- 25/02/08** Consultants GHD were engaged by Council to determine the most appropriate option/s for the site, having regard to the various site constraints including flora & fauna, flooding & riparian corridor, open space potential, existing residential development in the locality, bushfire affectation and Asset Protection Zone requirements.
- 23/12/09** GHD submitted a final Development Opportunity Report, including Flora and Fauna, and Bushfire Assessments, provided in Attachment 6 (under separate cover).
- 03/02/10** Letter sent to DECCW seeking 'in principle' support of a proposal to undertake a rezoning and minor development in accordance with the recommendations of GHD.
- 12/05/10** Correspondence was received from DECCW advising that no 'in principle' support would be provided, and raising various issues with the proposal (discussed later in this report).
- 08/09/10** Letter sent to DECCW clarifying intentions for the site and seeking DECCW's cooperation in addition to requesting a meeting.
- 13/10/10** Further letter sent to DECCW providing additional information in preparation for meeting.
- 20/10/10** Council's Forward Planning and Property Development staff met with DOP and DECCW staff to discuss the site and the issues raised by DECCW in previous correspondence.
- 03/11/10** Correspondence was received from DECCW, not objecting to the proposal, however also not providing any 'in principle' support, and still raising some concerns.

REPORT

The purpose of this report is to advise Council of the outcomes of GHD's investigations into the best possible use of the subject site, in addition to discussions with DECCW, with a view to preparing a planning proposal to rezone the site.

1. Description of the Site

The subject site consists of land known as Lot 32 DP 1004057, No 1-19 Colbarra Place (Hill Road Reserve), and Lots 3 and 4 DP 16095, Nos 1 & 3 Hill Road, West Pennant Hills. A locality and zoning plan and aerial photograph are provided below, and in broader context in Attachments 1 and 2.



Current Zoning Map - BHLEP 2005



Aerial Photograph (2008)

Lot 32 DP 1004057 is owned by Council and zoned part Residential 2(b) and part Open Space 6(a) (Existing and Proposed Public Recreation). The reserve is triangular in shape and consists partly of grassed, unembellished open space and dense vegetation (some mature growth with a dense understorey of mainly exotic species and weeds). An open drainage channel runs south from a headwall opening at the Colbarra Avenue end of the site and continues through Lots 3 and 4. A second, smaller drainage channel runs through the site in an easterly direction from a pipe beneath Hill Road.

Lot 4 DP 16095 is a privately owned parcel of land currently occupied by a single dwelling, tennis court, swimming pool and sheds. Zoned part Residential 2(b) and part Open Space 6(a), the site is partly grassed and vegetated with garden areas and natural growth (both native and exotic).

Lot 3 DP 16095 zoned Open Space 6(a), is owned by Council and is currently occupied by a single dwelling. The eastern side of the site is densely vegetated.

Lot 3 DP 16095 and Lot 32 DP 1004057 will need to be reclassified from 'community' to 'operational' under the Local Government Act 1993.

2. Surrounding Area

Located to the north and west of the site is existing low density residential development, zoned Residential 2(b). Also to the north of the site is the Colbarra Place Reserve offering passive recreational opportunities. To the east is large lot residential development zoned Residential 2(d) (Protected). To the south of the site is an integrated housing development, and a parcel of vacant land approved for an 8 lot subdivision on land zoned Residential 2(d).

The wider surrounding area is also characterised by low density residential development on lots varying in size from 700m² to 4000m² in environmentally sensitive areas, together with the Cumberland State Forest, IBM headquarters and numerous recreational and passive open space reserves.

The site forms part of a valuable vegetation corridor, although somewhat fragmented, traversing the West Pennant Hills Valley.

3. Flora & Fauna

Blue Gum High Forest (BGHF) and species indicative of Sydney Turpentine Ironbark Forest have been identified on the site. BGHF is a critically endangered ecological community under the Environment Protection and Biodiversity (EPBC) Act 2000, and the Threatened Species Conservation (TSC) Act 1995. Sydney Turpentine Ironbark Forest is critically endangered under the EPBC Act, and endangered under the TSC Act.

Two threatened fauna species (Grey-headed Flying-fox and Eastern Bent-wing Bat) are known to occur on the site, and a number of additional threatened species are likely to use the site at times. The Grey-headed Flying-fox is listed as vulnerable under the TSC and EPBC Acts, and the Eastern Bent-wing Bat is listed as vulnerable under the TSC Act. The vegetation and riparian corridor on site provide habitat for a range of native fauna.

The Flora & Fauna report undertaken by GHD in 2008 mapped the vegetation on site, identifying areas of high, medium and low conservation significance. A copy of this map is provided in Attachment 3.

4. Bushfire classification

The majority of the site is classified as bushfire prone land (Category 2) and bushfire prone land buffer (30m). The only unaffected portion of the site is the north western corner of Lot 32.

Based on the current site conditions, the Asset Protection Zone (APZ) required for the land is 35m for areas upslope of the hazard. The APZ requirements present a significant constraint to the development potential of the site and would require the removal/modification of some significant vegetation. However the loss of this vegetation would be offset as outlined in this report.

5. GHD Development Opportunity Report

Past studies have concluded that the site is not required to fulfil the open space needs of residents in the West Pennant Hills Valley. In its current state (part-private ownership and inappropriate zoning), Council is limited in its ability to effectively manage the site and protect the significant vegetation that has been identified. A solution that includes the acquisition of Lot 4 DP 16095, and provides some appropriate development potential will enable revenue to be generated and thereby assist in the effective management of the overall site.

Council's previous attempts to rezone the site have been unsuccessful therefore an alternative solution is necessary. GHD were engaged in 2008 to assist Council in determining the best outcome for the whole site which would provide a balance between all the environmental, economic and social constraints and factors involved. GHD were required to review all previous studies and undertake new ones in order to identify any development potential, recommend a suitable zoning for the site, and facilitate the management and protection of significant vegetation.

6. Development Potential

After undertaking further ecological and bushfire investigations, GHD prepared a concept for the site which provides a small area of development potential on the least constrained part of the site to the west, an area of approximately 7,900m² with the potential to yield approximately 11 lots with areas between 700m² and 1100m². This part of the site is predominantly grassed, has a low level of conservation significance, and has road frontage. An excerpt from the Development Potential Map is provided below. GHD recommended a zoning of part R2 Low Density Residential and part E2 Environmental Conservation. Zoning options are discussed later in this report.



Legend

Creek Line	High conservation significance to be impacted (4379m ²)
Subject Site Lots	High conservation significance retained (20247m ²)
Riparian Corridor	Medium Conservation significance area to be rehabilitated (privet Thicket/regrowth 2834m ²)
APZ 35m depth	Rehabilitation Area (5653m ²)
Potential Development Area (min depth 27m - 7883m ²)	

Development Potential Plan & Legend, GHD Development Opportunity Report, December 2009

Negotiations for the purchase of Lot 4 DP 16095 are underway to consolidate Lot 4 with Lot 3 DP 16095 and Lot 32 DP 1004057. The preliminary subdivision plan provided in Attachment 4 is an indicative representation of what could be achieved on the site should Council proceed with a planning proposal as recommended by this report.

7. Asset Protection Zone (APZ) & Impacts on Significant Vegetation

Whilst residential development would be located on the area of the site that is largely unconstrained, an APZ of approximately 35 metres would be required for bushfire management and would comprise a 20 metre inner protection area (IPA), located 5.00 metres inside the rear boundary of the proposed lots and 15 metres outside. A 15 metre wide outer protection area would also be required down slope of the IPA making the total width of the APZ 35 metres. The likely APZ is illustrated in blue on the GHD development potential map and would result in the removal or modification of around 4,379m² of vegetation identified as having high conservation significance, including approximately 18% of the extent of the Blue Gum High Forest (BGHF) community on the site. The APZ would require the removal of some canopy trees and undergrowth, with the area beneath the remaining canopy pruned or slashed to reduce hazard.

GHD have advised that the removal or modification of even 18% of the BGHF is likely to constitute a significant effect pursuant to section 5A of the Environmental Planning & Assessment Act 1979, and that an appropriate biodiversity offset (discussed below) would therefore be necessary due to:

- The status of the ecological communities under the EPBC Act;
- Previous advice from DECCW indicating that a species impact assessment and provision of compensatory offsets would be required as part of any application for development; and
- Recent Land and Environment court judgements highlighting the importance of even degraded remnants of BGHF.

In addition to the APZ requirements for any new development on the site, both the existing and approved (but not constructed) developments to the south of the site also place APZ maintenance obligations on the southern boundary of the site (possibly up to 35m). This impact on high significance vegetation cannot be avoided due to existing approvals. It is separate matter to the APZ requirement generated by any development of the site and is therefore not accounted for in any calculations related to a planning proposal for the site.

Although much of the vegetation on site is highly significant, its quality is diminished by fragmented ownership, existing residential development on two of the lots, dense undergrowth and weeds. To progress a development concept for the site presents a considerable opportunity for Council to obtain full ownership of the site and to implement effective management strategies for the vegetation. As shown in the attached aerial photograph (Attachment 2), the vegetation on site forms part of a corridor throughout the West Pennant Hills Valley (although somewhat fragmented). Council has an opportunity to preserve and enhance this corridor through appropriate development that will generate the required funds.

8. Biodiversity Offset Strategy

A biodiversity offset strategy is required to compensate for the loss or modification of 4,379m² of high significance vegetation as a result of the APZ. The GHD report suggests the following solutions would make up an appropriate strategy:

- Should Council successfully acquire Lot 4, the area currently occupied by the private dwelling and ancillary structures (totalling approximately 5,260m²), would be completely revegetated once existing development is demolished, to supplement and enhance the endangered vegetation;
- Rehabilitation (weed control and regeneration) of the areas on site identified as having medium significance (totalling approximately 2,834m²) to significantly improve the overall quality and consistency of vegetation on the site;
- Retention and management of the remaining 21,950m² of high significance vegetation;
- Overall protection of the site through appropriate zoning and Council ownership; and
- Creation and implementation of a Vegetation Management Plan (VMP) in conjunction with DECCW for ongoing management.

In summary, the significant vegetation lost or modified as a result of the proposal would be offset as follows:

Loss of vegetation	4,379m²
Revegetation on Lot 4	5,260m ²
Rehabilitation areas	2,834m ²
Total area revegetated or rehabilitated	8,094m ²
Net gain of vegetation	3,715m²

9. Zoning Options

Baulkham Hills LEP 2005

The site is currently zoned part Residential 2(b), and part Open Space 6(a) (Existing and Proposed Public Recreation). This zoning pattern is neither an accurate reflection of the development opportunity nor location of the significant vegetation on site. Having established the area of the site most suited to development and the areas that require management and protection, the most appropriate zoning for such areas must be determined.

The surrounding land is zoned either Residential 2(b) or 2(d) (Protected) under the Baulkham Hills LEP 2005, and is characterised by low density development. Given the environmental constraints of the site it is considered that the most appropriate zone for the developable portion of the site, under the current LEP, is Residential 2(d) (Protected), to accommodate low density residential development. The objectives of the 2(d) zone are as follows: -

- (a) *to provide for the residential development of land within the zone having particular regard to the special environmental development constraints of that land, and*
- (b) *to provide for the preservation of the vegetative, landscape, drainage, scenic and environmental qualities of the land within the zone by minimising the impact of development on the natural environment.*

Currently, there is no appropriate environmental protection zone in the BHLEP 2005 that would suitably address the remainder of the site which is largely occupied by the significant vegetation. Notwithstanding that the site is not required for open space or formal recreational purposes, the only remotely applicable existing zone is Open Space 6(a) (Existing and Proposed Public Recreation). The objectives of this zone include consideration of environmental protection and acquisition, including:-

- (b) *to identify land that is now owned, or proposed to be owned, by the Council and to provide for the acquisition or dedication of that land for open space or public recreational purposes, and*
- (d) *to protect, preserve and enhance areas of urban bushland and fauna habitat corridors that are considered valuable in terms of their natural heritage significance and recreational, educational, aesthetic and scientific value.*

This zone permits uses such as child care centres, caravan parks, restaurants, recreation facilities, and so on, none of which are appropriate considering the environmental constraints of the site.

An alternative to the 6(a) zone would be to create an entirely new environmental protection zone, and apply this to the undevelopable portion of the site. Given Council is currently preparing a new LEP in accordance with the Standard Template, which does provide suitable zoning options, this is not considered appropriate.

Draft LEP 2010

On 13 July 2010 Council endorsed the Draft LEP 2010 and resolved to forward the Draft LEP to the Department of Planning to seek an approval to exhibit. It is expected that exhibition of the Draft LEP will commence early in 2011.

The Draft LEP 2010 offers opportunities for environmental protection through zoning. The objectives of the E2 Environmental Conservation Zone are consistent with the intention to protect and manage the areas of high conservation value on the site: -

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

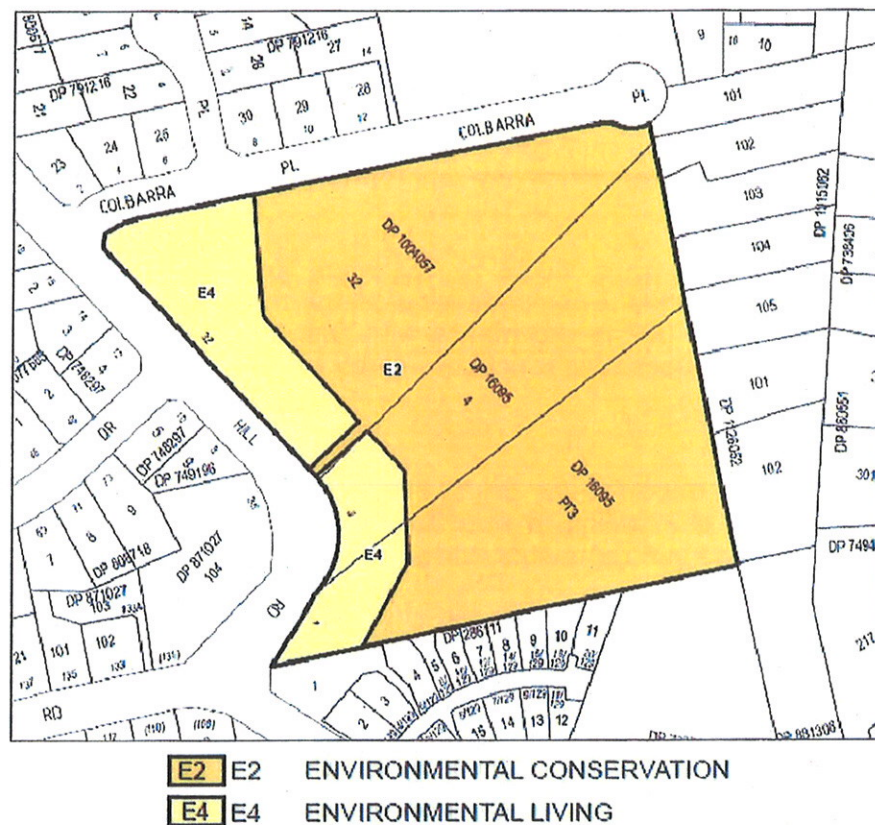
Uses that may be permissible within this zone include environmental facilities, environmental protection works, research stations and roads. This zone has been used elsewhere in the Shire to zone wetlands and Council's bushland reserves with high conservation value.

The E4 Environmental Living Zone would be a suitable zone for the developable portion of the site (as opposed to the more general R2 Low Density Residential zone recommended by GHD), with the following objectives: -

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

Uses that would be permissible within this zone with consent are proposed to include home-based child care, home occupations, bed and breakfast establishments, building

Given the timeframe within which Council's Draft LEP 2010 is expected to be completed, amending LEP 2005 to incorporate template zonings would have no adverse impact. Conversely, should the new LEP come into force whilst a planning proposal for this site is incomplete, it could then easily become an amendment to the new LEP. The recommended zoning is shown below: -



Accordingly, the preparation of a planning proposal to rezone the site to part E4 Environmental Living and part E2 Environmental Conservation is recommended.

The APZ required for any residential development along the Hill Road frontage of the site is proposed to be accommodated partially within the proposed lots and within the land to the rear, all of which would ideally be owned by Council following the acquisition of Lot 4. Similarly, existing approvals to the south of the site require Council to maintain an

APZ on the southern boundary of the site. This presents liability issues to Council since it will be responsible for maintaining the APZ and therefore the safety of future residents. Despite this, it is preferable that Council manage the APZ area outside of the rear boundaries of the lots fronting Hill Road, particularly when dealing with vegetation of high conservation significance. Council can ensure the APZ is properly managed and significant vegetation is not compromised by encroaching ancillary residential development such as pools, sheds or unauthorised clearing.

To manage this risk a Bushfire Hazard Reduction Management Plan shall be prepared as part of any future development proposal for the site. Similar plans have been prepared for Council land elsewhere in the Shire including Porters Road, Kenthurst. Council's Natural Assets Officer has indicated that the maintenance and upkeep of the APZ in this area would be achievable. Council maintains approximately 147 hectares of APZ throughout the Shire and receives recurrent funding from the NSW Rural Fire Service for this purpose.

The alternative options to an APZ managed by Council are: -

- That portion of the site required for APZ purposes be zoned the same as land proposed for development, and form part of each residential lot with site specific controls and covenant to manage the APZ and restrict development; or
- A community title subdivision (as opposed to torrens title) be prepared, with that part of the site proposed to be zoned E4 managed under a community title arrangement, and not owned or managed by Council.

Neither of these options will provide the level of management or protection that is necessary for the endangered ecological communities on the site. Furthermore it is unlikely that this approach would be supported by DECCW given their objection to DCP and community title management of vegetation in Council's 2005/2006 draft LEP.

11. Discussions with DECCW & Department of Planning (DOP)

The previous draft LEP to rezone the entire site to Residential 2(a2), with a site specific DCP to manage and protect significant vegetation in a community title arrangement, was abandoned in 2006 due to an objection by DEC (now DECCW): -

"DEC has considered the rezoning proposal and is not convinced that the preferred option will provide appropriate long-term protection and conservation of the endangered ecological communities and threatened species located within the site. DEC does not view the proposed non-statutory site specific DCP as a sufficiently strong mechanism to protect and manage the significant natural values of the site."

Although any planning proposal for the site in accordance with the recommendations of this will be a separate and new process, it is important that Council demonstrate that the objection made by DECCW in the past has been adequately addressed and no longer presents an obstacle to achieving a good outcome for the site. The proposal outlined in this report clearly addresses the DEC objection of 2006. The proposed zoning provides for ongoing statutory protection, a significant improvement to the quality and management of the vegetation on the site, and neither community title nor DCP controls are proposed.

In order to ensure any future planning proposal is to successfully proceed, it was considered prudent to consult with DECCW on the outcomes of the GHD report and advise of Council's intentions for the site. A series of correspondence has been sent

between DECCW and Council throughout 2010 and is summarised in this part of the report. The original correspondence is provided in Attachment 5.

Ideally, some form of 'in principle' support from DECCW would assist in considering the rezoning of the subject site. This support was requested in a letter to DECCW in February 2010, to which a reply was received in May 2010 from DECCW making various comments summarised below.

▪ *Possible understating of areas of high conservation significance*

DECCW supports the Conservation Significance Assessment Process (CSAP) methods adopted by GHD's Ecological Assessment, however the Conservation Significance map (see Attachment 3) does not reflect the significance criteria given on page 13 of the ecological report. For example, the remnant BGHF in the south western corner and outer limits of the riparian corridors are not identified as having high conservation significance, despite the criteria listing 'remnant endangered ecological communities and creek lines' as having high significance.

Comment: The riparian corridors are 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 at these outer limits. They are given low conservation significance, according to the low significance criteria of 'predominantly exotic vegetation of a highly modified nature'. Aerial photographs provided later in this report also show consistent non-vegetation of these parts. Elsewhere on the site they are appropriately identified as high significance.

The remnant BGHF and stag trees in the south western corner of the site could fairly be considered high conservation significance, and cover an area of approximately 450m². This area would add between only 1 and 2% to the total area of highly significant vegetation proposed for removal, and would still be adequately offset by the land that is proposed to be revegetated and rehabilitated, in addition to the area that is already occupied by high conservation significance vegetation. Overall, the site will still gain more land for regeneration than is removed.

		+450m²
Loss of vegetation	4,379m²	4829m²
Revegetation on Lot 4	5,260m ²	5,260m ²
Rehabilitation areas	2,834m ²	2,834m ²
Total area revegetated or rehabilitated	8,094m ²	8,094m ²
Net gain of vegetation	3,715m²	3265m²

▪ *Impacts on vegetation from the proposed subdivision*

The clearing of native vegetation and mitigation by offsets as proposed by Council should be considered only where impacts are unavoidable. In assessing the adequacy of any offset proposal, it is recommended an objective methodology (such as Biobanking) be applied.

Comment: Regardless of the methodology used, DECCW appears not to comprehend the critical issue of Council needing to undertake some minor development in order to achieve a successful and long term outcome for the site in its entirety. If no action is taken, purely for the purpose of protecting 4379m², DECCW can be assured that the entire site will suffer from gradual clearing and mismanagement over time and a major conservation opportunity will be lost. The removal and modification of a small

portion of the high significance vegetation is entirely necessary to ensure protection of the remaining portion, in addition to enabling the regeneration and rehabilitation of much larger areas of the site. Aerial photographs provided later in this report clearly demonstrate the ability of both Sydney Turpentine Ironbark and BGHF to regenerate in this location.

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

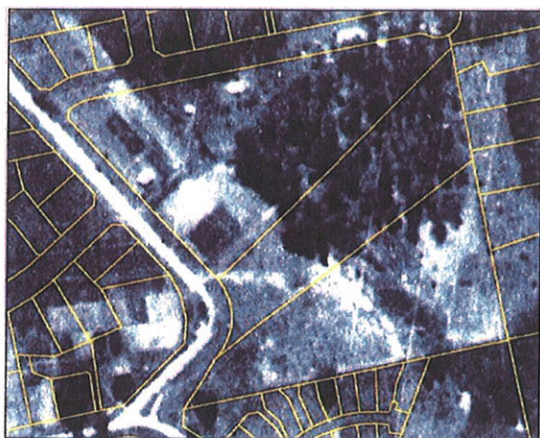
It is unclear whether APZ's will be required for existing development adjoining the south and east of the site, and the resultant impacts on the ecological significance of the site.

Comment: Investigations into approvals for adjoining development to the east of the site revealed that APZ requirements (if any) are easily provided within these properties and will have no impact on the site. This report has previously discussed the APZ requirements resulting from existing development to the south. The impact on the site's vegetation from this APZ exists whether or not a planning proposal and future development on the site proceeds, therefore this concern is not relevant.

- *Re-establishing Endangered Ecological Communities*

With respect to the 5260m² of the site within Lot 4 that is proposed to be re-established with vegetation, DECCW is unaware of any instances where either BGHF or Sydney Turpentine communities have been successfully re-established in non-vegetated areas, and questions the viability of doing so in this instance.

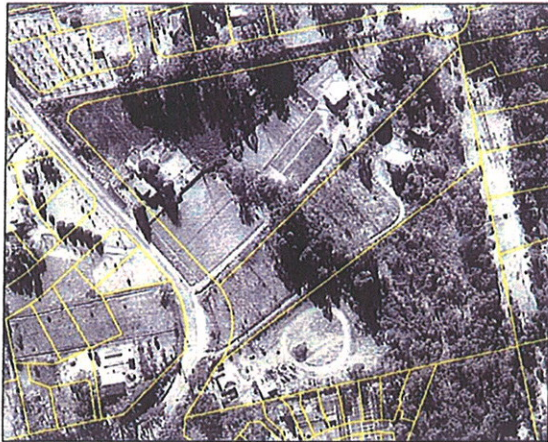
Comment: Provided below are a series of aerial photographs of the site dating from 1928 to the present which clearly demonstrate that due to clearing very little if any of the Turpentine or BGHF communities existed on the site in some parts of the site as recently as 1982. The communities present today have naturally re-established in this location without assistance.



1928



1951



1971



1982



2008

Furthermore, 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. In addition, bush care workers monitor for any natural revegetation and if found, would encourage that growth rather than replanting.

- *Land-use zoning of the proposed conservation area*

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

Comment: It is proposed to utilise Standard Template zones E2 Environmental Conservation and E4 Environmental Living, both of which provide appropriate land uses and protection for the site.

- *The role of DECCW in the consent process*

DECCW notes that if Council determines the proposal is likely to have a significant effect on threatened species or ecological communities, the concurrence of the Director General of DECCW is required.

Comment: DECCW are referring to the process under which a development application would be considered which is not relevant at this point in time. A planning proposal to rezone the site is the first action to be taken, and Council would seek DECCW's advice at the development application stage should it proceed to that point.

A response was sent to DECCW in September 2010 and again on 13 October 2010. A meeting was then arranged and held between Council staff and representatives of DOP and DECCW on 20 October 2010 to discuss the site and the new concept for the site and the issues raised. At the meeting some of the above issues were clarified and it was requested that DECCW provide some indication of support.

On 3 November 2010 DECCW did not provide the 'in principle' support requested, however advice provided did indicate that the proposal was a significant improvement on the previous DLEP. The following comments were provided: -

- DECCW supports Councils efforts to achieve a positive environmental outcome for the site and acknowledges the current proposal is a significant improvement on the previous proposal.

- *Zoning*

DECCW supports an E2 Environmental Conservation zoning with appropriate permitted uses. The appropriateness of 'clearing native vegetation' and 'research stations' is questioned. Permissible uses should be reconsidered and if included in the land use table to address existing uses in other proposed E2 zones, these lands should be split zoned.

Comment: Although uses are proposed to be permitted in the E2 zone, it does not signal an intention to utilise them in all areas with that zoning. The E2 zone is proposed to apply to land from one end of the Shire to the other. With respect to 'clearing native vegetation', this in fact provides a mechanism by which consent must be obtained for this use, as opposed to being an activity that is undertaken without accountability or assessment. It does not signal any intention to undertake clearing, which is clearly shown in the intentions for the revegetation and management of the site. A 'research station' means *a building or place operated by a public authority for the principal purpose of agricultural, environmental, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation*. Such a use would be appropriate in a suitable location, however it is not a use that would be considered appropriate for the site which is intended purely for vegetation conservation and is surrounded by residences. It is not considered that either of these uses being permitted in the E2 zone presents a threat to the environmental goals for the site.

- *Areas of high conservation significance*

DECCW again suggests that the GHD Ecological Assessment incorrectly underestimates the significance of some areas on the site being parts of the riparian corridor and remnant BGHF in the southeastern corner of the site.

Comment: This matter has been dealt with in response to DECCW's original letter and earlier in this report.

- *Impacts on vegetation from a proposed subdivision*

DECCW provides further clarification with respect to its suggestion that Council consider applying a Biobanking Assessment Methodology to assess the adequacy of proposed offsets. By applying an objective assessment methodology Council can determine whether any offsite biodiversity credits are required should the proposal result in an overall reduction in biodiversity values.

Comment: As discussed in relation to DECCW's original comment, regardless of the methodology, the loss of up to 4829m² of existing high conservation significance vegetation would be easily offset by the regeneration of 8094m² of the same species, and more significantly, the rezoning of the site to reflect the conservation values of the site and provide ongoing protection for the vegetation.

The area to be conserved is also a more compact and manageable area which provides for a sustainable ecological outcome rather than managing fragmented stands of vegetation.

▪ *Impacts on vegetation within the proposed conservation area from APZ's*

DECCW states that where an APZ may be required for existing and proposed development on the southern boundary of the site, Council should consider applying a more appropriate zoning (eg RE1). Biodiversity values will also be reduced within the APZ's required to protect future development within the proposed E4 zone. It is recommended Council reconsider the proposed zoning to ensure any APZs are not located within an areas zoned E2.

Comment: With respect to the southern boundary of the site, applying a different zone to the APZ area will provide no benefit to the ecological protection of the site. To introduce a RE1 Public Recreation zone which specifies objectives and land uses that are inappropriate in such close proximity to a highly sensitive site, is not considered appropriate and appears to be inconsistent with the concerns DECCW raised with regard to certain land uses being permitted within the E2 zone. This also applies to land required to provide an APZ for any future development of the land proposed to be zoned E4 on the site. The alternative would be to contain APZ's within private property, which is considered inappropriate due to reasons outlined earlier in this report, and again is inconsistent with DECCW's objection to the original proposal in 2006.

Despite any reduction in ecological values resulting from APZ's, the E2 zone (together with the E4 zone) is considered to be the most appropriate zoning for the site.

▪ *Re-establishing Endangered Ecological Communities*

DECCW again questions the ability of vegetation to be regenerated on the site and recommends that prior to finalising the planning proposal, an independently reviewed revegetation management plan be prepared by Council to ensure re-establishment is feasible.

Comment: The issue of successful regeneration is addressed earlier in this report. A revegetation management plan would be prepared as a matter of course at the subdivision stage should a planning proposal proceed. This level of detail at the planning proposal stage is onerous and unnecessary.

To summarise, DECCW agrees that the current proposal is a significant improvement on the previous proposal. A number of issues have been raised by DECCW, primarily in

relation to APZ's, zoning, land uses and regeneration. All of the concerns outlined above can be addressed, and it is considered that the proposal ultimately provides the best outcome for the site. It is recommended that Council proceed with a planning proposal and seek the support of the Department of Planning with respect to the issues raised by DECCW.

The alternative to the above would be for Council to abandon the project entirely. If this were to occur, the owner of Lot 4 may sell to another private party, or require that part of Lot 4 that is currently zoned Open Space 6(a) to be acquired by Council and sell the remaining portion. In either case the site would continue to exist as underutilised passive open space and rental property in part. The opportunity to manage the site as a whole and contribute significantly to vegetation linkages and regeneration of endangered ecological communities in the locality would be lost indefinitely.

CONCLUSION

The planning proposal recommended in this report is based on reasonable and conservative development expectations, and an achievable biodiversity offset strategy that will result in an overall improvement to ecological values, and provide security for future management of the significant vegetation on the site. It is considered that the concerns raised by DECCW can be easily addressed and the Department of Planning assured of the merits of the proposal to enable a planning proposal to proceed.

The timing of the proposal is such that it is appropriate to utilise zones and associated provisions (i.e. building height and minimum lot size) from the Draft LEP 2010, to ensure the best environmental outcome for the site, and also to assist in gaining the support of key agency DECCW. Depending on the progress of a planning proposal, it may either amend the current BHLEP 2005, or be an amendment to LEP 2010.

IMPACTS

Hills 2026

The rezoning of the subject site to reflect the areas of high conservation and limited development potential will facilitate appropriate future development. The concurrent preservation/regeneration of the endangered ecological communities present on the majority of the site will be a significant contribution to the Shire's natural heritage.

RECOMMENDATION

1. A planning proposal be prepared and submitted to the Department of Planning to:
 - i. Rezone Lot 32 DP 1004057 known as 1-19 Colbarra Place, Lot 3 & 4 DP 16095 known as Nos 1 & 3 Hill Road, West Pennant Hills to part E2 Environmental Conservation zone and part E4 Environmental Living zone as illustrated in this report;
 - ii. Apply a height limit of 9m and a minimum lot size of 700m² to the land proposed to be zoned E4;
 - iii. Apply a minimum lot size of 40 ha to the land proposed to be zoned E2; and
 - iv. Reclassify Lots 3 DP 16095 and Lot 32 DP 1004057 from 'community' to 'operational' land as defined in the Local Government Act 1993.

ATTACHMENTS

1. Locality/Zoning Map Hill Road Reserve (1 page)
2. Aerial photo of locality Hill Road Reserve (1 page)
3. Vegetation conservation significance map (1 page)
4. Subdivision concept plan (1 page)
5. Correspondence between DECCW and Council February - October 2010 (14 pages)
6. GHD Final Report Hill Road December 2009 (159 pages, under separate cover)

ATTACHMENT 1